

DA4TBAN1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

12 CV 1422 (JSR)

6 BANK OF AMERICA CORPORATION,  
7 *successor to Countrywide*  
8 *Financial Corporation,*  
9 *Countrywide Home Loans, Inc.,*  
10 *and Full Spectrum Lending, et*  
11 *al.,*

Defendants.

-----x

New York, N.Y.  
October 4, 2013  
10:00 a.m.

13 Before:

14 HON. JED S. RAKOFF,

15 District Judge

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## APPEARANCES

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Southern District of New York

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(In open court, jury present)

THE COURT: The government will call their next witness.

MS. SCHOENBERGER: The United States calls Maria Brewster.

MARIA BREWSTER,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SCHOENBERGER:

DEPUTY CLERK: Please be seated and state your name and spell your last name slowly for the record.

THE WITNESS: Maria Bruehwiler Brewster,  
B-R-E-W-S-T-E-R, B-R-U-E-H-W-I-L-E-R.

THE COURT: Counsel.

Q. Good morning, Ms. Brewster.

Ms. Brewster, are you employed?

A. Yes.

Q. Where do you work?

A. Fannie Mae.

Q. And how long have you worked at Fannie Mae?

A. Fifteen years.

Q. What is your title there?

A. Director in the centralized repurchase team.

Q. Is the centralized repurchase team part of a larger

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Brewster - direct

1 division?

2 A. Yes.

3 Q. What is that division?

4 A. The national underwriting center.

5 Q. What is the centralized repurchase team responsible for?

6 A. The resolution of all repurchases that go out of Fannie  
7 Mae.

8 Q. Could you describe what a repurchase is?

9 A. A repurchase is when we find a loan that was delivered to  
10 Fannie Mae that shouldn't have been delivered to us, it didn't  
11 meet our guidelines, then we send it back to the lender who  
12 sent it to us and we get our money back, essentially.

13 Q. Where is your office located?

14 A. I work out of Chicago and Dallas.

15 Q. And what are your job responsibilities as the director of  
16 the centralized repurchase team?

17 A. I have a team of employees who report to me that work with  
18 the lenders directly. They review the rebuttals that come from  
19 the lenders and work on the resolutions on each of those  
20 cases.

21 Q. Does your office review loan files?

22 A. My particular -- can you give me some definition of what  
23 you mean by review loan files? Do you mean just look at them?

24 Q. How does your office determine which loans to request  
25 repurchase on?

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1 A. The national underwriting center, when they review the  
2 files that -- they use various ways to select loans for review,  
3 and when they come in, a first review is done of all those  
4 loans. When they're reviewing, if they find something that is  
5 in violation of the guidelines and they feel it's the level  
6 that should be a repurchase, they send it to a second review,  
7 basically. The second review team will verify yes, indeed  
8 there is a violation, and it should be to the level of  
9 repurchase, and then a repurchase letter will go out to the  
10 lender.

11 Q. When did you first begin working in the mortgage industry?

12 A. 1986.

13 Q. Were you ever an underwriter of mortgage loans?

14 A. Not personally, no.

15 Q. Have you ever supervised the underwriting of mortgage  
16 loans?

17 A. Yes.

18 Q. How much experience do you have supervising the  
19 underwriting of mortgage loans?

20 A. Direct experience would be about nine or ten years.

21 Q. How long have you had the position of director of the  
22 centralized repurchase team at Fannie Mae?

23 A. Five years.

24 Q. Is that since 2008?

25 A. Yes.

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1 Q. What were your job responsibilities in 2008?

2 A. In the centralized repurchase team, very much what they are  
3 now.

4 Q. Did you supervise a staff at that time?

5 A. Yes.

6 Q. Does Fannie Mae underwrite the loans that it buys before  
7 purchase?

8 A. No.

9 Q. Why not?

10 A. It wouldn't be economically viable for the company to  
11 review every single loan that we purchase beforehand. The  
12 amount of staff needed to review every single mortgage that  
13 originated would make it a huge company, and therefore it  
14 wouldn't be able to keep of flow of money going through the  
15 mortgage industry as quickly as possible or as economically as  
16 possible.

17 Q. Did Fannie Mae expect its lenders to underwrite the loans  
18 that it sells to Fannie Mae?

19 A. Yes.

20 Q. Is that a requirement?

21 A. Yes.

22 Q. Are lenders required to promise that the loans they are  
23 selling comply with Fannie Mae's guidelines?

24 A. Yes.

25 Q. In 2008, what documents set forth the requirements for

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1 selling loans to Fannie Mae?

2 A. That would be the master seller servicer contract, there  
3 would be the selling guide, and then there would be the  
4 individual contracts that had variances in them.

5 Q. In 2008, did Fannie Mae have a contract with Countrywide?

6 A. Yes.

7 MS. SCHOENBERGER: Your Honor, may I approach the  
8 witness?

9 THE COURT: Yes.

10 Q. Ms. Brewster, I handed you a binder. Could you please turn  
11 to the tab that's marked Exhibit 1223, and I think it may be  
12 the third tab.

13 Do you recognize this document?

14 A. Yes.

15 Q. What is this document?

16 A. It looks like a Fannie Mae selling guide from 2007.

17 Q. Are you familiar with the selling guide through your work  
18 at Fannie Mae?

19 A. Yes.

20 Q. And is this the complete copy of the selling guide in  
21 effect in 2007?

22 A. I don't believe so.

23 Q. Do you recognize it to be an excerpt of the 2007 selling  
24 guide?

25 A. It appears to be so, yes.

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1 MS. SCHOENBERGER: Your Honor, the United States  
2 offers Defendant's Exhibit 1223 into evidence.

3 MR. JONES: No objection.

4 THE COURT: Received.

5 MR. MUKASEY: No objection from us.

6 THE COURT: Received.

7 (Plaintiff's Exhibit 1223 received in evidence)

8 Q. Ms. Brewster, does the 2007 selling guide include  
9 requirements that lenders self-report certain loans that it  
10 sold to Fannie Mae?

11 A. Yes.

12 Q. Can you please turn to Part One, Chapter 3, Section 301.01,  
13 Subsection D of the selling guide.

14 MS. SCHOENBERGER: And Ms. Michaud, I believe that's  
15 on page 54, and I believe that is about the fourth page from  
16 the back of the document. Please blow up Section D, please.

17 Q. Ms. Brewster, does this subsection contain a requirement  
18 related to self-reporting?

19 A. Yes.

20 Q. Can you please read the second paragraph of Subsection D  
21 into the record?

22 A. We require that the results of quality assurance reviews be  
23 reported to the lender's management on a regular basis,  
24 preferably within 30 days after review is completed. The  
25 lender should have in place procedures to ensure that all



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1 significant issues identified through the quality assurance  
2 review process are satisfactorily resolved. If the lender  
3 identifies an issue that significantly affects our risk for a  
4 mortgage the lender sold to us, the lender must notify us  
5 immediately and then provide a written report of the findings  
6 and corrective actions being taken to its lead Fannie Mae  
7 regional office within 30 days. We will work closely with the  
8 lender to evaluate the facts of the case and come up with an  
9 appropriate solution.

10 Q. Did the selling guide contain additional provisions  
11 relating to self-reporting?

12 A. Yes.

13 Q. Can you please turn to Part One, Chapter 2, Section 2.02.

14 MS. SCHOENBERGER: And Ms. Michaud, this is page 23 of  
15 the document.

16 Ms. Michaud, could you blow up the first full  
17 paragraph of this page.

18 Q. Ms. Brewster, does this section of the selling guide  
19 contain a provision related to self-reporting?

20 A. Yes.

21 Q. Can you please read the last sentence of this the paragraph  
22 into the record, beginning with, "We expect?"

23 A. We expect a lender to advise its lead Fannie Mae regional  
24 office immediately if it learns of any misrepresentation or  
25 breach of a selling warranty. This notification is required

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1 for all breaches or misrepresentations, including fraud in  
2 origination and underwriting processes, regardless of whether  
3 the act is committed by the lender, the lender's agent, the  
4 borrowers, or any other third party, and whether or not the  
5 lender believes that the fraud or misrepresentation constitutes  
6 a breach of its representations and warranties.

7 Q. You can set that document aside.

8 Are files maintained with respect to the repurchase  
9 requests that Fannie Mae makes?

10 A. Yes.

11 Q. Are they maintained by your office?

12 A. Yes.

13 Q. What types of documents are contained in those files?

14 A. Those files are going to contain the documents that the  
15 lender first sent in to us on the files that we're going to  
16 review. There's going to be any kind of research documentation  
17 that we do, and there will be copies of any correspondence that  
18 we have with the lender, the repurchase letter, any rebuttals  
19 they send in, any answers we give back, as well as private  
20 notes within our organization.

21 Q. How are the files initially transmitted to Fannie Mae which  
22 are eventually included in your repurchase files?

23 A. Files can come several ways. Some lenders will send us the  
24 hard copy files, some will send CDs or disks, and others can go  
25 ahead and download it right through our quality assurance

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1 system.

2 Q. Do you know how Countrywide transmitted its files to Fannie  
3 Mae?

4 A. I do not.

5 Q. Are repurchase files routinely kept in the regular course  
6 of business?

7 A. Electronically.

8 Q. And where are they stored?

9 A. They're stored in what we call the quality assurance  
10 system, it's our system of record.

11 Q. Is information contained in your repurchase files compiled  
12 around the same time as repurchase requests are made?

13 A. Usually.

14 Q. Can you please turn to the tab marked PX322 in your binder.

15 Do you recognize this document?

16 A. Yes.

17 Q. What is this document?

18 A. It's some of the information on a file that was reviewed by  
19 my team on a repurchase.

20 Q. And is this document maintained in Fannie Mae's QAS system?

21 A. Yes.

22 MS. SCHOENBERGER: Your Honor, the United States  
23 offers Plaintiff's Exhibit 322 into evidence.

24 MR. JONES: Objection, your Honor.

25 May we approach at the side bar?

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1 THE COURT: Yes.

2 (At side bar)

3 THE COURT: Yes.

4 MR. JONES: Your Honor, this is a loan file that there  
5 hasn't been any foundation laid, through this witness or any  
6 other evidence yet, that this is a High-Speed Swim Lane loan.  
7 In fact, we believe it's not a High-Speed Swim Lane loan.

8 THE COURT: Well, is it on the government's pretrial  
9 consent order list?

10 MS. SCHOENBERGER: Yes, it is. And also subject to  
11 connection, we think we can show it's a High-Speed Swim Lane  
12 loan through a witness that will testify later in trial.

13 THE COURT: All right. And was there a relevance  
14 objection made or foundation? What objections, if any, were  
15 made in the pretrial consent order?

16 MR. JONES: There was a relevance objection made.

17 THE COURT: So I'll take it subject to connection  
18 then.

19 (Continued on next page)

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1 (In open court).

2 THE COURT: 322 is received subject to connection.

3 (Plaintiff's Exhibit 322 received in evidence)

4 BY MS. SCHOENBERGER:

5 Q. Ms. Brewster, can you please turn to the page that is  
6 marked as U.S.A. 00071666, that's the 15th page in this  
7 document.

8 Ms. Brewster, do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. This is a repurchase letter on this particular file.

12 Q. Is it associated with a particular loan?

13 A. Yes.

14 Q. Was this letter issued out of your office?

15 A. Yes.

16 Q. And was it prepared by your staff?

17 A. Yes.

18 Q. Are you identified on the third page as the underwriting  
19 director?

20 A. Yes.

21 Q. Who sold this loan to Fannie Mae?

22 A. It appears from the letter that it was Bank of America.

23 Q. And who originated the loan associated with this letter?

24 A. Based on this letter, Countrywide Bank.

25 Q. And when was that loan originated?

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1 A. The letter cites January 2008, January 25th, 2008.

2 Q. Did your office review the loan file associated with this  
3 letter?

4 A. The national underwriting center would have.

5 Q. Did your office make a determination as to whether the loan  
6 complied with Fannie Mae's guidelines?

7 A. Yes.

8 Q. And what determination did your office make?

9 A. That it did not comply with our guidelines.

10 Q. Why not?

11 A. Two issues, misrepresentation of income and  
12 misrepresentation of occupancy.

13 Q. What's a misrepresentation of income?

14 A. It's basically where the borrower says they made more  
15 money, or it could be less money, but the amount of money they  
16 put on their application and signed their final documents with  
17 was not the correct income.

18 Q. Can you please turn to the second page of this letter.

19 Does the first paragraph of this page describe the  
20 income misrepresentation we discussed?

21 A. It would be more than the first paragraph. That first  
22 section, yes.

23 Q. Can you please read the first paragraph into the record?

24 A. According to the loan application, the borrower was  
25 employed as a doorman/hospitality with Pebble Beach Company for

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Brewster - direct

1 twelve years and earned \$13,000 a month. Our review of the  
2 documentation submitted within the loan file raised concerns  
3 regarding the borrower's income and/or employment. The  
4 processing requirements are based on the results of CLUES  
5 analysis of the transaction and the underwriter analysis of the  
6 reasonableness of the stated income by the borrower on the  
7 Uniform Residential Loan Application Form. 1003 is always  
8 required.

9 Q. You also mentioned there was an occupancy issue with this  
10 file. What was that issue?

11 A. The issue was the borrower said this property was their  
12 primary residence. Their primary residence, this property, is  
13 located in Fort Lauderdale, Florida. His employment is in  
14 Pebble Beach, California.

15 Q. And how did that indicate an issue with occupancy?

16 A. Well, given that his role as a doorman, that's a job that  
17 you actually have to be physically present to do, it would be  
18 hard to commute from Florida to California every day.

19 Q. Was that discrepancy apparent on the face of the original  
20 loan file?

21 A. Yes, on the application.

22 Q. Is the loan application included as part of the file that  
23 was reviewed by Fannie Mae?

24 A. Yes.

25 Q. Can you please turn to the page Bates stamped U.S.A.

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1 00071900.

2 MS. SCHOENBERGER: Ms. Michaud, the last page of the  
3 document.

4 Q. Ms. Brewster, is this the loan application from the loan  
5 file that was sold to Fannie Mae?

6 A. It does appear to be a loan application for this file.

7 Q. And what information on this loan application indicates an  
8 occupancy misrepresentation to you?

9 A. If you go to the middle of the page under the borrower  
10 information it says his present address is his address in  
11 Tamarac, Florida. That's the address that is our subject  
12 property. Below that where it gives employment information, it  
13 says that he works at Pebble Beach Company in Pebble Beach,  
14 California as a doorman.

15 Q. Does this application indicate whether this is a loan  
16 application for a primary residence or some other type of  
17 property?

18 A. It says it's a primary residence.

19 Q. And where do you see that on the application?

20 A. Toward the top, property will be primary residence,  
21 secondary residence or investment, they have the X by primary  
22 residence.

23 Q. Ms. Brewster, can you please turn to the tab marked PX381  
24 in your binder. Do you recognize this document, Ms. Brewster?

25 A. Yes.



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Brewster - direct

1 Q. What is this document?

2 A. It's a repurchase letter for another property, another  
3 loan.

4 Q. Is this a copy of the file maintained in your QAS system?

5 A. It appears to be so.

6 MS. SCHOENBERGER: Your Honor, the United States  
7 offers Plaintiff's Exhibit 381 into evidence.

8 MR. JONES: Objection.

9 THE COURT: Pardon?

10 MR. JONES: Objection.

11 THE COURT: Ground?

12 MR. JONES: Relevance.

13 MS. SCHOENBERGER: Your Honor, this exhibit is also  
14 subject to connection.

15 THE COURT: Is the relevance objection the same we  
16 discussed?

17 MR. JONES: It is.

18 THE COURT: So this is received subject to connection.

19 (Plaintiff's Exhibit 381 received in evidence)

20 (Continued on next page)

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Brewster - direct

1 Q. Was this file reviewed by Fannie Mae for compliance with  
2 Fannie Mae's guidelines?

3 A. Yes.

4 Q. Was a determination made as to whether this loan complied  
5 with Fannie Mae's guidelines when it was sold to Fannie Mae?

6 A. It was determined that it did not comply.

7 Q. Why not?

8 A. Two reasons. They had a misrep of credit, undisclosed  
9 liabilities. Liabilities the borrower didn't tell about,  
10 didn't disclose, and insufficient assets to go to closing.

11 Q. Were any of these issues apparent on the face of the  
12 original loan file?

13 A. In the original file that the staff had reviewed, the  
14 assets would have been most apparent on the original file.

15 Q. Who sold this loan to Fannie Mae?

16 A. The seller is listed as Bank of America.

17 Q. Who originated this loan?

18 A. According to the file here, Countrywide Bank.

19 Q. When was this loan originated?

20 A. According to the document, October 2, 2007.

21 MS. SCHOENBERGER: Your Honor, the United States has  
22 nothing further at this time.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. JONES:

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Brewster - cross

1 Q. Good morning, Ms. Brewster. My name is Malachi Jones and I  
2 represent Bank of America.

3 In 2008 you were the director of the centralized  
4 repurchase team within the NUC, is that right?

5 A. Yes.

6 Q. In that role you oversaw auditors who were conducting  
7 secondary review of loan files?

8 A. At in 2008, yes.

9 Q. Approximately how many auditors did you have underneath you  
10 who were conducting those reviews?

11 A. I had second reviews only, and I think we had approximately  
12 30 people.

13 Q. The loans that your team was reviewing were loans that had  
14 already undergone a primary review, isn't that right?

15 A. Yes.

16 Q. They had initially been reviewed by another team that made  
17 a determination that there was a significant finding, correct?

18 A. Correct.

19 Q. What was the name of that other team that conducted the  
20 primary review?

21 A. It was another area of the national underwriting center.  
22 We either refer to them as the QA review team, loan review  
23 team, first reviews. Any of those is how they were referred  
24 to.

25 Q. How many auditors were within that QA review team that

DA43BAN2

Brewster - cross

1 conducted the primary review?

2 A. I don't remember.

3 Q. Once the QA review team made a determination that there was  
4 a significant finding, it was sent over to your team, the  
5 centralized repurchase team for review, correct?

6 A. Yes.

7 Q. That was in order to make a determination whether to put  
8 back a loan for repurchase, correct?

9 A. It was to reaffirm the original decision.

10 Q. Repurchase of a loan was a remedy that Fannie Mae had  
11 available under its contractual agreements with its lenders,  
12 correct?

13 MS. SCHOENBERGER: Objection.

14 THE COURT: Ground?

15 MS. SCHOENBERGER: Relevance.

16 THE COURT: Sustained.

17 Q. The audits conducted by the centralized repurchase teams  
18 included loans that had been randomly selected, correct?

19 A. Ones where a significant finding had been found would come  
20 to my area only.

21 Q. Some of those loans were loans that initially were randomly  
22 selected for auditing, is that correct?

23 A. Correct.

24 Q. How were they randomly selected?

25 A. There is a division -- a model was used to make a random

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Brewster - cross

1 selection of all the deliveries that came into Fannie Mae.

2 Q. Some of the loans that were select for initial review also  
3 were targeted loans?

4 A. Correct.

5 Q. How were they targeted for review?

6 A. There were several different kinds of models and different  
7 kinds of targeting that would be done. Some targeting was  
8 particularly looking for stuff that we thought was bad stuff,  
9 and different models were used to find those loans. Other  
10 kinds of targeting was more around a product we wanted to check  
11 to see how a particular product was doing or a particular new  
12 lender was doing.

13 Q. Another group of loans that was selected for initial review  
14 were loans that had defaulted, correct?

15 A. Yes.

16 Q. During the time that you were the director of the  
17 centralized repurchase team, the audits that were conducted  
18 covered loans that originated by Countrywide, correct?

19 A. Correct.

20 Q. As well as by other lenders, correct?

21 A. Correct.

22 Q. The results of the audits were sometimes there were a  
23 significant findings, correct?

24 A. Correct.

25 Q. A significant finding is a finding that a loan has violated

DA43BAN2

Brewster - cross

1 a contractual requirement that Fannie Mae has, correct?

2 A. Correct.

3 Q. The results of the audits were tracked by Fannie Mae?

4 A. Yes.

5 Q. There were reports that were created?

6 A. Yes.

7 Q. Were those reports produced monthly?

8 A. There are many, many reports that could be generated any  
9 time. There could be a daily report, there could be a monthly  
10 report, or it could be an ad hoc report.

11 Q. You were familiar with those reports?

12 A. Some of them.

13 Q. Those reports included information regarding the percentage  
14 of significant findings from a particular lender?

15 MS. SCHOENBERGER: Objection.

16 THE COURT: Ground?

17 MS. SCHOENBERGER: Relevance.

18 THE COURT: Overruled.

19 A. Could you restate the question for me?

20 Q. And those reports included information about the percentage  
21 of significant findings from a particular lender?

22 A. Yes.

23 Q. Those reports also tracked the types of significant  
24 findings that were being found, correct?

25 A. Some did.

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Brewster - cross

1 Q. Some of those reports would be circulated to other groups  
2 within Fannie Mae?

3 A. Yes.

4 Q. Were those reports shared with the account team?

5 A. I don't know that I could say that.

6 Q. Were those reports shared with the credit risk group?

7 MS. SCHOENBERGER: Objection.

8 THE COURT: Sustained.

9 Q. Through those reports, Fannie Mae would have been able to  
10 assess the quality of the loans that it was receiving from a  
11 particular lender, correct?

12 MS. SCHOENBERGER: Objection.

13 THE COURT: Sustained.

14 Q. You are not aware of a formal definition that Fannie Mae  
15 has for what a significant finding is, correct?

16 A. I'm not -- I do not recall a written one. There was the  
17 understanding a significant finding is anything that would have  
18 been a violation of a contract or the guide.

19 Q. A significant finding was a determination that a loan was  
20 ineligible for sale to Fannie Mae?

21 A. It could be.

22 Q. Fannie Mae had three levels of significant findings, isn't  
23 that correct?

24 A. At that time, yes.

25 Q. Level three significant finding being the most serious

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Brewster - cross

1 finding, correct?

2 A. Yes.

3 Q. A level one significant finding would be the most minor?

4 A. Relatively.

5 Q. Fannie Mae did not demand repurchase on all loans that had  
6 significant findings, correct?

7 MS. SCHOENBERGER: Objection.

8 THE COURT: Sustained.

9 Q. The fact that a person with the title of underwriter was  
10 involved in the -- was not involved with the origination of the  
11 loan was not the basis for a significant finding, correct?

12 A. Correct.

13 Q. The fact that a loan was originated by automated  
14 underwriting system with conditions cleared by a loan processor  
15 was not the basis for a significant finding, correct?

16 MS. SCHOENBERGER: Objection.

17 THE COURT: It's defective as to form. Is there any  
18 other objection?

19 MS. SCHOENBERGER: No, your Honor.

20 THE COURT: So rephrase.

21 Q. If the loan was originated by an automated underwriting  
22 system, and conditions were cleared by a loan processor, that  
23 was not something that would cause a significant finding to be  
24 issued for a loan, correct?

25 MS. SCHOENBERGER: Objection.



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Brewster - cross

1 THE COURT: You're saying if both those conditions  
2 were met? That it was both originated by an automated  
3 underwriter and the conditions were cleared by a loan  
4 processor?

5 MR. JONES: Yes, your Honor.

6 THE COURT: I'll allow it.

7 A. Could you repeat again?

8 Q. Okay. If a loan was originated by an automated  
9 underwriting system with an accept, and conditions were cleared  
10 by a loan processor, that would not be the basis for a  
11 significant finding, correct?

12 A. Correct.

13 Q. If you could turn to Plaintiff's Exhibit 322, which is one  
14 of the QAS files or quality assurance files the government  
15 reviewed with you. If you can turn to the repurchase request  
16 letter, I think you looked at the number in the  
17 bottom-right-hand corner 71666. It also would have the number  
18 FNM BOA 41369.

19 Do you see that this letter is dated January 20, 2011?

20 A. Yes.

21 Q. So this is would have been approximately three years after  
22 this loan had been originated?

23 A. It appears to be.

24 Q. You stated that one of the significant findings with  
25 respect to this loan was a misrepresentation of income?

DA43BAN2

Brewster - cross

1 A. Yes.

2 Q. If you can read into the record the first two sentences of  
3 that bottom paragraph on this page.

4 A. "The subject mortgage was delivered under lender's alt A  
5 stated income variance. This program allowed for alternative  
6 documentation to help increase processing efficiencies and did  
7 not require the lender to verify the borrower's income used to  
8 qualify. However, the borrower was required to sign a loan  
9 application that specifically stated that all the information  
10 on the application was true and correct."

11 Q. The stated income variance was a variance that Countrywide  
12 had from Fannie Mae to originate stated income loans, correct?

13 A. Correct.

14 Q. For those stated income loans, Countrywide was not required  
15 to verify the borrower's income, correct?

16 A. Correct.

17 Q. If you can turn to the second page of this letter. Looking  
18 at the top half of this letter. In order to verify the income  
19 for this borrower, Fannie Mae contacted the borrower's  
20 employer, correct?

21 A. Yes.

22 Q. And also went to several websites, indeed.com and  
23 salary.com, to gather salary information, correct?

24 A. Correct.

25 Q. Ms. Brewster, you don't know what a High-Speed Swim Lane

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Brewster - cross

1 loan is, do you?

2 A. Now I do.

3 Q. In 2011, at the time that this letter was issued, you did  
4 not know what a High-Speed Swim Lane loan was?

5 A. I don't recall knowing that.

6 Q. You don't know whether this particular loan was processed  
7 through the High-Speed Swim Lane, do you?

8 A. No.

9 Q. If you can turn to the page of this file, looking at the  
10 bottom on the bottom-right hand 72121. Or it is also Bates  
11 labeled as FNM BOA 41824.

12 A. Could you repeat the bottom numbers again?

13 Q. U.S.A. 72121.

14 A. Yes, found it.

15 Q. Do you see in the top half of this page where it says user  
16 who had a note is named James Henderson?

17 A. Yes.

18 Q. Could you read the text of the note underneath that.

19 A. "Income reasonably based on history 1003."

20 Q. If you can go down to the next paragraph where there is the  
21 words underwriting worksheet. Do you see that?

22 A. Yes.

23 Q. If you can read starting at those two stars where it says  
24 underwriting worksheet, the next two lines.

25 A. "January 10, 08, 7:50 a.m. approved. Income approved.

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Brewster - cross

1 13,000. Authority level four. Title underwriter. FBW  
2 approved. Approved score. Authority level four. Title  
3 underwriter. FBW score --"

4 Q. That's okay. I just wanted you to read the next three  
5 lines. So this loan file indicates or reflects that an  
6 underwriter approved this stated income, correct?

7 MS. SCHOENBERGER: Objection.

8 THE COURT: Ground?

9 MS. SCHOENBERGER: Foundation.

10 THE COURT: Lay a foundation if you can.

11 Q. When this loan was audited by Fannie Mae, an auditor would  
12 have reviewed every page of this loan file, correct?

13 A. Correct.

14 Q. You yourself sometimes reviewed the loan files, correct?

15 A. After the repurchase went out.

16 Q. Loan files from Countrywide included the notes about the  
17 origination process, correct?

18 A. I don't know. I can't be sure.

19 Q. Let's move on to the other QAS file that you discussed with  
20 the government. That was Plaintiff's Exhibit 383.

21 A. I have an Exhibit 381.

22 Q. I'm sorry. Yes. Excuse me. Plaintiff's Exhibit 381.

23 THE COURT: 381.

24 THE WITNESS: Thank you.

25 May I clarify my answer to the previous question?

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Brewster - cross

1 THE COURT: Go ahead.

2 THE WITNESS: Thank you, your Honor.

3 If Countrywide or BofA had notes in the file that they  
4 delivered to us, they would have been available to be reviewed.  
5 But I can't say that they were reviewed absolutely or that they  
6 were in all files.

7 Q. When auditors were conducting audits, they would have had  
8 to review every page in the loan file, correct?

9 A. Correct.

10 Q. Because one of the bases for a significant finding can be  
11 there is missing documentation in the file, correct?

12 A. Correct.

13 Q. So, to be able to exclude the possibility there was any  
14 missing documentation, the auditor would have to review every  
15 single page in the file, correct?

16 MS. SCHOENBERGER: Objection.

17 THE COURT: Sustained.

18 Q. If you can go to Plaintiff's Exhibit 381. Ms. Brewster,  
19 you don't know whether this was a loan file that was originated  
20 through the High-Speed Swim Lane process, do you?

21 A. No.

22 Q. If you can go to the page that's numbered 41141. That's  
23 after U.S.A.

24 A. 41411?

25 Q. 41141. At the top of that page says loan level notes.

DA43BAN2

Brewster - cross

1 Have you found the page, Ms. Brewster?

2 A. Yes, I have, thank you.

3 Q. Do you see the top portion where it says user who had a  
4 note Daniel Krol?

5 A. Yes.

6 Q. If you can read that paragraph underneath there starting  
7 with underwriting worksheet, read that into the record.

8 A. "Underwriting worksheet. September 26, 2007. 10:15 a.m.

9 Approved. Income approved. 7950 -- \$7,950. DR is five.

10 0.47 percent. Authority level three. Title senior associate.

11 Underwriting Daniel J. Krol. A paper non-conforming."

12 Q. Ms. Brewster, if we can go back to Plaintiff's Exhibit 322.

13 This time I'm going to ask you to go to the page that's labeled  
14 on the bottom-right-hand corner U.S.A. 72217. Have you found  
15 it, ma'am?

16 A. 72217?

17 Q. That's correct.

18 A. Yes.

19 Q. You also see it on the screen.

20 A. Yes, I do. Thank you.

21 Q. If you look at the top-right-hand corner of this document,  
22 do you see where it says branch number then it has an address?

23 A. Yes.

24 Q. If you can read that branch number and that address into  
25 the record.

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Brewster - cross

1 A. Branch number 0006114. Address is 15100 N.W. 67th Avenue  
2 Suite 207, Miami Lakes, Florida, 33014.

3 MR. JONES: I pass the witness, your Honor.

4 Thank you, ma'am.

5 MR. MUKASEY: I have three or four questions. May I  
6 stand right here?

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MR. MUKASEY:

10 Q. I'm Marc Mukasey and I represent Rebecca Mairone who is  
11 sitting right here. You don't know Rebecca, do you?

12 A. Not that I know.

13 Q. You've never spoken to Rebecca Mairone to the best of your  
14 knowledge, correct?

15 A. Correct.

16 Q. You've never received any correspondence from Rebecca  
17 Mairone to the best of your recollection, am I right?

18 A. Yes.

19 Q. When I say correspondence, I mean any e-mail  
20 correspondence, have you?

21 A. To the best of my recollection, no, I've not.

22 Q. No postal mail correspondence, correct?

23 A. To the best of my knowledge, no.

24 MR. MUKASEY: Thank you very much.

25 THE COURT: Redirect?

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Brewster - cross

1 MS. SCHOENBERGER: Briefly, your Honor.

2 REDIRECT EXAMINATION

3 BY MS. SCHOENBERGER:

4 Q. Ms. Brewster, does a reasonableness analysis need to be  
5 performed for a stated income loan?

6 A. It depends on -- usually.

7 Q. The repurchase letter that you looked at related to Exhibit  
8 322 stated that it is always required. Doesn't it?

9 MR. JONES: Objection.

10 THE COURT: Ground?

11 MR. JONES: The document speaks for itself.

12 THE COURT: Pardon?

13 MR. JONES: The document speaks for itself.

14 THE COURT: Yes. Sustained.

15 Q. Ms. Brewster, in your experience supervising underwriters,  
16 can you tell us how a reasonableness analysis is performed?

17 A. The first thing you do is you look at the job itself. What  
18 would be kind of a reasonable expectation for what a particular  
19 job would make. If you're comfortable, if you know something  
20 about that profession, if you know about that particular area  
21 where somebody lives and you have an idea of how long they've  
22 been working at the job, you can kind of guess a general range  
23 of what somebody makes.

24 From there you can use tools. There's different tools  
25 like salary.com, indeed.com, that will give you a more specific



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Brewster - redirect

1 idea of what people in that particular profession would be  
2 making in that particular market.

3 Secondary things you can look at is, for instance,  
4 look at their credit. When you look at their credit, it is not  
5 the credit score that will tell you what they make. If your  
6 credit card, your allowable high balances on credit cards are  
7 very high, that correlates to a more higher income. Whereas if  
8 you've got lower credit limits, then obviously your income is  
9 probably not quite as high in comparison.

10 So you look at it holistically. You look at their  
11 home, you look at what the value of the home, you look at their  
12 other assets. They kind of paint the picture of a profile of  
13 what somebody of a particular income probably would be making.

14 Q. Did Fannie Mae determine that \$13,000 a month for the  
15 doorman who applied for the loan shown in Exhibit 322 was  
16 reasonable?

17 MR. MUKASEY: Objection.

18 THE COURT: Overruled.

19 A. Excuse me?

20 Q. Did Fannie Mae determine that \$13,000 a month for the  
21 doorman who applied for the loan that is shown in Exhibit 322  
22 was reasonable?

23 A. No, we did not believe it was reasonable.

24 Q. Ms. Brewster, how are repurchase letters delivered to  
25 lenders?

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Brewster - redirect

1 A. One of several ways. They can either be overnighted, so  
2 they get a hard copy. Other lenders can get it through the QAS  
3 system if they're connected to it, it will come right through  
4 the system to it. Others may get an e-mail version of it. A  
5 very secured e-mail site that will be used to transfer the  
6 information.

7 Q. Did your role at Fannie Mae in 2008 include communications  
8 with employees at Countrywide?

9 A. Yes.

10 Q. In what format did such communications occur?

11 A. Most of my communication at my level would have been to  
12 talk about general -- specific issues on specific cases that we  
13 felt needed to be escalated and talk about them. The  
14 production between our two areas and how much flow is going  
15 back and forth. And different issues that they were having --  
16 that either side might have had a conflict about and wanted to  
17 talk about.

18 Q. Were these in-person discussions?

19 A. Some were.

20 Q. Did such discussions occur over the phone?

21 A. Yes.

22 Q. Did they occur over e-mail?

23 A. Yes.

24 Q. Who were your central contacts at Countrywide in 2008  
25 period?

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Brewster - redirect

1 A. I had three main ones. I had Nancy Bush, Cindy Simantel,  
2 and Pavel Maryska. On occasion I spoke with Mike Schloessmann  
3 as well.

4 MS. SCHOENBERGER: Thank you. Nothing further.

5 THE COURT: Anything else?

6 MR. JONES: No, your Honor.

7 MR. MUKASEY: No, Judge.

8 THE COURT: Thank you very much. You may step down.  
9 Please call your next witness.

10 (Witness excused)

11 MR. CORDARO: The United States calls Michael Sobczak,  
12 your Honor.

13 (Witness sworn)

14 THE DEPUTY CLERK: Please be seated. State your name  
15 and spell your last name slowly for the record.

16 THE WITNESS: Michael Sobczak, S-O-B-C-Z-A-K.

17 MICHAEL SOBCZAK,

18 called as a witness by the Plaintiff,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CORDARO:

22 Q. Good morning, Mr. Sobczak. Are you employed?

23 A. Yes, I am.

24 Q. Who is your employer?

25 A. PennyMac Mortgage Corporation in Moorpark, California.

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Sobczak - direct

1 Q. What is your position?

2 A. I'm the first vice president and the director of  
3 underwriting.

4 Q. Could you just explain to us briefly what PennyMac is?

5 A. PennyMac is a mortgage banker. It accepts mortgage  
6 applications from the borrowing public. We make loans.

7 Q. When did you first begin your employment at PennyMac?

8 A. In March of 2012.

9 Q. For whom did you work before you were employed at PennyMac?

10 A. For Fannie Mae.

11 Q. What was your last position you held at Fannie Mae?

12 A. Director of account risk management in Fannie Mae's Western  
13 Business Center in Pasadena, California.

14 Q. Approximately how long were you employed at Fannie Mae?

15 A. Approximately 14 years. I started there in 1997.

16 Q. I'd like to go into your educational background if we  
17 might. Can you please describe that for the jury starting in  
18 college.

19 A. Yes. I have a bachelor's of business administration degree  
20 from the University of Wisconsin, Milwaukee, in 1975. And a  
21 master of economics degree from that same university in 1984.

22 Q. How long have you worked in the mortgage industry?

23 A. More than 30 years.

24 Q. When did you first start employment at Fannie Mae?

25 A. In 1997.

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Sobczak - direct

1 Q. Could you take us through the positions that you held at  
2 Fannie Mae starting in 1997.

3 A. I joined Fannie Mae as the director of underwriting in  
4 1997. That position morphed into a job called director of risk  
5 management. Director of risk management then led to a job  
6 called director of customer account risk management.

7 Q. Which position did you hold during the 2007, 2008 time  
8 period?

9 A. It was the director of customer account risk management.

10 Q. Could you explain what your job responsibilities were in  
11 that role.

12 A. My responsibility was working with my client base in  
13 ensuring that the terms and agreements under which Fannie Mae  
14 purchased loans were documented contractually, and I was  
15 responsible for understanding how customers originated and  
16 manufactured loans.

17 Q. Could you explain to the jury a little more about what you  
18 mean by understanding how customers originated and manufactured  
19 loans?

20 A. Sure. Part of my -- a big part of my job was working with  
21 customers and helping understand the processes and the  
22 procedures they used in making mortgage loans. That included  
23 working with them on-site, it included visiting with them  
24 on-site, that included review of performance information, that  
25 also included work with clients in developing terms of business

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Sobczak - direct

1 that were acceptable to Fannie Mae.

2 Q. Why was this important?

3 A. It was important because Fannie Mae, as the leading  
4 secondary market provider, needed to ensure that loans lenders  
5 delivered met the requirements of the contracts.

6 Q. You said your title was director of customers accounts risk  
7 management, is that correct?

8 A. Correct.

9 Q. Could you explain what you mean by accounts risk  
10 management?

11 A. Yes. In the Western Business Center, each of our major  
12 lenders was assigned an account team. An account team  
13 comprised of Fannie Mae employees. Within that team were  
14 marketing related activities, and credit risk related  
15 activities.

16 The marketing team was led by the director of  
17 marketing, and the risk marketing team was responsible for  
18 pricing and terms of engagement. And I was responsible for the  
19 credit risk side.

20 And together, we, we worked together to ensure that  
21 the contracts and our understanding of how lenders originated  
22 and sold mortgage loans to us was accurate.

23 Q. You used the term risk both in your title and in the  
24 description. Can you explain to the jury what you mean by risk  
25 in this context?

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Sobczak - direct

1 A. Yes. Risk is a broad term that is designed to detail the  
2 loan eligibilities and the pricing of those loans in terms of  
3 performance. So, not every loan performs. And those loans  
4 that don't perform, and because not all the loans perform,  
5 Fannie Mae extracts a guarantee for every loan that comes our  
6 way.

7 Q. What is the nature of that guarantee?

8 A. The guarantee is expressed in basis points. 100ths of  
9 1 percent. So if a mortgage loan has an interest rate of, take  
10 for example, of 5 percent. Approximately 25 basis points of  
11 that 5 percent, a quarter of a percent, Fannie Mae keeps as a  
12 premium to ensure the principal and interest payment to an  
13 investor that essentially invests in that loan through a  
14 mortgage backed security.

15 Q. During 2007, 2008, did Countrywide sell loans to Fannie  
16 Mae?

17 A. Yes, it did.

18 Q. Were there any documents that governed that relationship  
19 between Countrywide and Fannie Mae?

20 A. Yes.

21 Q. What kind of documents?

22 A. There was the master contract. The master contract housed  
23 all the terms and conditions under which Fannie Mae would buy  
24 loans from specifically Countrywide. The selling contract was  
25 a broader document, which covered how loans were expected to be

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Sobczak - direct

1 underwritten and delivered. And there was also an alliance  
2 agreement, which defined how Countrywide and Fannie Mae  
3 conducted business together.

4 Q. In your position as director of customer accounts, customer  
5 accounts risk management, were you familiar with those  
6 documents that you just described to me?

7 A. Yes, I was.

8 Q. Why were you familiar with them?

9 A. I worked with them on a day-to-day basis. I was  
10 specifically responsible for ensuring that the contract was  
11 accurate. I was specifically responsible, especially when  
12 Countrywide called us about a individual loan scenario, I  
13 referred to the selling guide to ensure that the actual loans  
14 met the conditions of the selling guide. And also I had a  
15 role, small role to play in crafting the alliance agreement.

16 Q. During the 2008 -- 2007, 2008 time period, did you manage  
17 Countrywide's customer account at Fannie Mae?

18 A. The risk side of it, yes. The credit risk side of it.

19 Q. Were there any other directors in charge of the risk side  
20 of Countrywide's account?

21 A. Not from the Western Region Business Center.

22 Q. Did you supervise anyone in connection with those duties?

23 A. Yes, I did.

24 Q. Could you explain to the jury who you supervised.

25 A. Approximately six people who actually did the work. They



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Sobczak - direct

1 visited the customer, they responded to customer requests, they  
2 worked with our legal department to ensure that contracts were  
3 correct. They resolved issues, normal day-to-day issues that  
4 came up. I provided guidance on and supervised their  
5 activities.

6 Q. Did this team of folks have a name?

7 A. The name of the position that I supervised was customer  
8 account risk manager.

9 Q. Could you explain to the jury what your role was in  
10 relationship to this group of people?

11 A. Again, as their manager, I supervised their work. My role  
12 was distinguished from their work in that I had different  
13 contacts with Countrywide. So I faced off with my management  
14 equivalents at Countrywide, and the folks that I supervised,  
15 the customer account risk management, faced off with folks that  
16 reported to the Countrywide management equivalents.

17 Q. When you say that those people faced off with the  
18 Countrywide management equivalents, could you just explain to  
19 us what you mean by that?

20 A. Sure. There was a lot of day-to-day activity. Whether or  
21 not it related to questions about loans, or questions about  
22 contracts, the analytical work that went into developing new  
23 terms of business, there was a lot of data analysis and data  
24 reconciliation. There was the PowerPoints that needed to be  
25 generated in terms of discussions with Countrywide as with all

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1 lenders there.

2 So, a simple way of saying it is, they did a lot of  
3 the work, I provided guidance around the work, and I signed off  
4 on their work.

5 Q. Do you have a sense of how often your team interacted with  
6 employees of Countrywide during the 2007, 2008 time period?

7 A. Yes. Every day.

8 Q. What form did those interactions take, was it telephone or  
9 something else?

10 A. Telephone, e-mail. Countrywide was just down the road,  
11 there would be periodic visits. Those were the major interface  
12 forms.

13 Q. Shifting from your team, I'd like to talk about your  
14 interactions with employees of Countrywide. Could you explain  
15 to the jury the nature of those interactions during the 2007,  
16 2008 time period?

17 A. Yes. I related and faced off with vice presidents of  
18 credit risk, vice presidents of product development, and  
19 sometimes their teams.

20 Q. Do you recall any particular employees that you faced off  
21 with?

22 A. Yes. I would say Pauline Kennedy, who was, if my memory  
23 serves me correctly, vice president of credit policy, Greg  
24 Togneri, who was our principal Fannie Mae interface into  
25 Countrywide. Christian Ingerslev, who was part of the product

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Sobczak - direct

1 development management team, and their staffs.

2 Q. Did you have any particular topics that you typically  
3 discussed with those people at Countrywide?

4 MS. MAINIGI: Objection.

5 THE COURT: Ground?

6 MS. MAINIGI: Vague.

7 THE COURT: No. That's foundational. Overruled.

8 Q. Should I repeat the question?

9 A. Yes, please.

10 Q. Were there any particular topics that you discussed with  
11 those employees of Countrywide during the 2007, 2008 time  
12 period?

13 A. Not particular topics, but topics that were always of  
14 importance. Countrywide would often call us for requests for  
15 new -- thoughts around new products. Countrywide would share  
16 information around performance. We would share information  
17 around performance. There was always something going on with  
18 the master, the master contract, just because Countrywide was  
19 very interested in ensuring it was able to do the business that  
20 the borrowing public wanted.

21 Q. During that time period, how often did you personally have  
22 contact with employees of Countrywide?

23 A. If you're saying how often did I meet with them  
24 individually, I would say it varied over time. Sometimes I was  
25 there three times a week, sometimes I was there once a week,

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1 but there wasn't a day -- there were very few days where I  
2 didn't have some communication, whether or not it was by phone  
3 or e-mail.

4 Q. Are you familiar with the term "variance"?

5 A. Yes.

6 Q. Were you familiar with that term in the 2007, 2008 time  
7 period?

8 A. Yes, I was.

9 Q. Can you explain to the jury what a variance is.

10 A. A variance is an amendment to a standard provision of the  
11 selling guide. And a variance often led to an expanded  
12 eligibility that we granted lenders, because the lender's  
13 either ability or their past performance in that type of  
14 expanded eligibility proved that they could originate quality  
15 business.

16 Q. In your role in risk management -- is it okay if I just  
17 call that title risk management? There are a lot of words in  
18 it. If I say risk management, I mean director of customer  
19 accounts risk management.

20 A. It works for me.

21 Q. Okay. So, in your role in risk management, did you play  
22 any role with respect to variances for Countrywide?

23 A. Yes, I did.

24 Q. Could you explain what that role was.

25 A. Again, I was the day-to-day contact. Much of the actual or

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1 variance to variance work was drafted by my team, the team of  
2 risk managers. They worked with our in-house attorneys to  
3 construct the appropriate legal language which defined the  
4 terms and the conditions under which Fannie Mae would buy  
5 loans.

6 I was responsible for ensuring that the set of  
7 variances which I'll consider -- which I'll term to be the  
8 master contract, got renewed, or not, when they expired. Were  
9 analyzed and either signed off, or not, by my counterparts and  
10 my bosses in D.C., and those decisions got reflected back to  
11 Countrywide.

12 Q. Did you consider any information in performing that task?

13 A. Yes.

14 Q. What kind of information?

15 A. Loan performance, the lender's -- in this case  
16 Countrywide's -- ability to originate quality loans, the  
17 lender's ability in ensuring -- or the lender's training and  
18 the lender's systemic controls to produce quality loans. Those  
19 were the most important.

20 Q. What was the source of that information?

21 A. It could be on-site visits, it could be conversations, it  
22 could be sitting through presentations that Countrywide  
23 provided around those topics. There were several, several ways  
24 to collect that background.

25 Q. Did Countrywide ever transmit that information to you via

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1 an electronic system or any other way?

2 A. Yes.

3 Q. How?

4 A. Through PowerPoints. Sometimes they would provide us  
5 materials before we met, if there was going to be an on-site  
6 meeting. Sometimes we did something similar, so that when we  
7 got together, we were looking at information not always for the  
8 first time.

9 Q. Do you recall if any of that information was ever e-mailed  
10 to you?

11 A. I recall that it was.

12 Q. You made a reference to quality I believe with respect to  
13 loans. Could you explain to the jury what you mean by that?

14 A. Quality is defined under the provisions or under the  
15 contracts that I earlier defined. The selling guide defines  
16 quality, the master -- the set of variances embedded in the  
17 master contracts define quality. And quality is dependent on  
18 systems and people and process to ensure that loans are  
19 originated will perform.

20 Q. In your role in risk management, did you have an  
21 understanding as to any standard that loans had to meet in  
22 order to be considered quality?

23 MR. MUKASEY: Objection.

24 THE COURT: Ground?

25 MR. MUKASEY: Vague.

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1 THE COURT: Overruled. You may answer.

2 A. Each loan type, and there were many different loans types,  
3 were held to their own performance criteria. Fannie Mae used  
4 assumptions to generate an expected default rate. And one type  
5 of a product may have -- may have different types of  
6 performance expectations than others.

7 So to circle back to your question about quality,  
8 quality from our perspective oftentimes started with how the  
9 loans performed, versus how they were expected to perform.

10 Q. At that time, did you have an understanding as to whether a  
11 contract addressed the issue of quality?

12 A. The contract does not address the issue of quality  
13 specifically.

14 Q. Does the selling guide address the issue of quality?

15 A. The selling guide provides guidance around what lenders  
16 need to do to help ensure that the mortgages they originate are  
17 of quality nature.

18 Q. Are you familiar with the term "investment quality"?

19 A. Yes.

20 Q. Were you familiar with that term back in 2007, 2008?

21 A. Yes.

22 Q. Based on your understanding, what did that term mean to  
23 you?

24 A. Investment quality starts with the master selling and  
25 servicing contract. And investment quality, from my

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1 perspective as well as Fannie Mae's perspective, I believe, is  
2 a generic term that means loans originated and sold to Fannie  
3 Mae will perform. Will pay.

4 Q. What do you mean by "will pay"?

5 A. That the borrower will make, if it is a 30-year mortgage,  
6 will make a payment over the term of that loan.

7 Q. Are you familiar with the term "representation and  
8 warranty"?

9 A. Yes, I am.

10 Q. What was your understanding of that term back in 2007,  
11 2008?

12 A. That's a -- representations and warranties is an important  
13 construct under which Countrywide and all lenders delivered  
14 loans to Fannie Mae. It is impossible to have a -- it is  
15 impossible to provide guidance and exacting procedures that  
16 lenders would need to follow for every loan type, given that  
17 there are hundreds of different types of loan types, and lots  
18 of different markets.

19 Representations and warranties is the overarching  
20 business framework that lenders deliver loans that they  
21 represent and warrant that loans meet the selling guide  
22 standards, that loans meet the individual variance standards,  
23 and they comply with any other agreements that are already in  
24 place.

25 THE COURT: Counsel, we're going to want to find a



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1 appropriate spot to give the jury their midmorning break. Is  
2 this a good point?

3 MR. CORDARO: This is it, your Honor.

4 THE COURT: So ladies and gentlemen, we'll take a  
5 15-minute break.

6 (Jury excused)

7 (Continued on next page)

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Sobczak - direct

1 THE COURT: You can go back outside.

2 THE WITNESS: Okay.

3 THE COURT: Couple items. First, I'll have my law  
4 clerk hand to government counsel my rulings on the objections  
5 to the Robert Price deposition. As I indicated with respect to  
6 the Boland deposition, copies have to be made for adversary  
7 counsel, and you need to use it obviously to conform the  
8 videotape. But then need to have it back so we can docket it.  
9 I don't know that I've received back the Boland one yet.

10 THE LAW CLERK: It's here.

11 THE COURT: Then we need to docket it. All right.

12 Now, there are some guests here from Seton Hall Law  
13 School, and I'm going to invite them to sit in the jury box for  
14 about five minutes while I talk to them a little bit, just give  
15 them some background of the case. So you're all free to go  
16 wherever you want to go, and we'll see you in 10 minutes.

17 (Recess)

18 (Continued on next page)

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Sobczak - direct

1 (Jury present)

2 THE COURT: All right.

3 BY MR. CORDARO:

4 Q. Mr. Sobczak, you testified earlier that a big part of your  
5 job was working with customers to help understand processes and  
6 procedures in making mortgage loans. Do you recall that?

7 A. Yes.

8 Q. Could you explain to the jury why that was a big part of  
9 your job?

10 A. That's a big part of the job because it goes back to the  
11 concept of originating and delivering investment quality  
12 mortgages.

13 Q. Could you explain that to the jury in a little more detail,  
14 please.

15 A. Sure. Investment quality mortgages require a certain  
16 lender infrastructure, systems and controls to ensure that  
17 loans are -- that are originated are of investment quality.

18 So some examples may be the lender who attracts  
19 qualified mortgage experts and trains their people well, a  
20 lender that has adequate management controls in place, a lender  
21 that has sufficient systems in place to ensure that  
22 non-investment quality loans do not get originated or  
23 manufactured.

24 Those are all things that, as director of customer  
25 account risk management, I was interested in understanding.

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1 Q. Did you have conversations with employees at Countrywide  
2 about those processes?

3 A. Yes, I did.

4 Q. Earlier in your testimony I think you made a reference to  
5 on-site meetings?

6 A. Yes.

7 Q. Are you familiar with something called an operational  
8 review?

9 A. Yes, I am.

10 Q. Was that something you were familiar with back in 2007 and  
11 2008?

12 A. Yes, I was.

13 Q. Can you explain to the jury what an operational review is.

14 A. An operational review is a team of Fannie Mae people,  
15 including a team of experts in underwriting and servicing and  
16 in accounting, that visit lenders, they actually do an on-site  
17 visit to spend time with the leaders in those respective groups  
18 and also to visit the operations of those areas as well.

19 Q. Did you have any role in operational reviews?

20 A. Yes, I did.

21 Q. What was that role?

22 A. I would be part of -- I could be part of the visit team,  
23 since the underwriting and the risk management expertise was  
24 provided oftentimes from my group. I would review their  
25 findings, sign off or edit their work. And also then work with

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1 customers such as Countrywide, if there were observations or  
2 findings that were taken and needed to be addressed, I would be  
3 part of the Fannie Mae team that ensures those findings were  
4 addressed.

5 Q. Based on your understanding, why did Fannie Mae conduct  
6 operational reviews of lenders?

7 A. It is one of the most important ways of ensuring that a  
8 lender, like Countrywide, has the infrastructure in place to  
9 originate and deliver quality mortgages, investment quality  
10 mortgages.

11 Q. Could you just explain to the jury what you mean by  
12 infrastructure.

13 A. An infrastructure could be an organization. So, does a  
14 lender have the right people, does the lender have enough of  
15 the right people, does the lender have adequate training to  
16 ensure that the right decisions are being made, does the lender  
17 have adequate information technology systems to ensure that  
18 loans are -- are originated correctly, they are entered into  
19 the computer correctly. And also, does the lender have the  
20 appropriate management controls to ensure that the decisions  
21 that are being made are the correct decisions.

22 Q. Did Fannie Mae conduct any operational reviews of  
23 Countrywide?

24 A. Yes, it did.

25 Q. Do you recall the time period that Fannie Mae conducted

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1 those operational reviews?

2 A. I can speak to the time period that I started at Fannie  
3 Mae, from 1997, through the time that I left. I know that  
4 Fannie Mae did an annual operation review. Not only for  
5 Countrywide, but for other lenders that the Western Business  
6 Center managed.

7 Q. Did your team at the Western Business Center ever  
8 participate in those operational reviews?

9 A. Yes, they did.

10 Q. During what time period?

11 A. The time period that I'm most intimate with is between 1997  
12 and approximately 2006 and 2007. The responsibility for  
13 performing operational reviews was vested in the regional  
14 business centers, and Pasadena was one. We had two other  
15 regional business centers.

16 Around the approximate date of maybe 2007 or  
17 thereabout, the responsibility for Fannie Mae's performing of  
18 operational reviews was shifted to a central organization. I  
19 believe it was headquartered out of -- it could be either D.C.  
20 or Dallas.

21 But prime responsibility for conducting reviews, to  
22 make it short, was moved from the business center to a Fannie  
23 Mae team dedicated to do only that.

24 Q. Let's talk about when the business center was doing  
25 reviews. Were you involved when the Western Business Center

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1 was doing reviews?

2 A. Yes, I was.

3 Q. Could you take the jury through essentially the steps that  
4 your team would go through in performing an operational review  
5 of a lender like Countrywide.

6 A. So first of all, an operational --

7 MS. MAINIGI: Objection, your Honor. Relevance with  
8 respect to the time period. Because I believe the witness  
9 testified that it was 2006 and the first part of 2007.

10 MR. CORDARO: I can connect this up a little bit.

11 THE COURT: Why don't you put some foundational  
12 questions along those lines.

13 Q. For the reviews that were conducted by the business center,  
14 what was your involvement?

15 A. So my involvement, I had several involvements. First of  
16 all, getting them scheduled. And operational reviews were  
17 usually scheduled --

18 THE COURT: No. For the moment just tell us what was  
19 your involvement.

20 THE WITNESS: My involvement was to manage the  
21 operational review, getting them done.

22 Q. Did you review any information that came out of the  
23 operational review in your role at that time?

24 A. Yes.

25 MR. MUKASEY: Objection. Again, I think there is a

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1 vagueness as to which time period we are talking about.

2 THE COURT: Overruled.

3 Q. We're in the business center time period right now. Do you  
4 understand that, Mr. Sobczak?

5 A. Yes.

6 Q. Before it went central?

7 A. Yes.

8 Q. Once it went central, did you continue to have any role at  
9 all in the process?

10 A. Yes, I did.

11 Q. Could you explain that role, please.

12 A. It was to work with my team, and the team or the  
13 appropriate team at a lender, in a lender shop, to rectify any  
14 findings, to correct any findings, or to remediate any issues.

15 Q. How did you learn about any findings when the process was  
16 centralized?

17 A. I receive a copy of the final report.

18 Q. When the process was in the business center, did you  
19 receive any reports on the process?

20 A. Since I authored that report, the answer would be yes. Or  
21 if I didn't author it, I signed off on it.

22 Q. In the centralized process, once the report was issued, did  
23 you have any role if there were findings in that report?

24 A. I had a role as the manager of the team, the underwriting  
25 team or the risk team that was given responsibility for



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1 clearing the findings under their expertise areas.

2 Q. Were you charged with discussing findings with any  
3 employees at Fannie Mae that may have come out of those  
4 operational reviews at the time it was centralized?

5 A. It wasn't that I was charged with. I was just part of the  
6 management process over which operational or around which  
7 operational reviews were discussed.

8 Q. Stepping back to the time period before when it was in the  
9 regional centers and you authored the report. Did you have to  
10 do anything after the report with respect to the findings at  
11 Fannie Mae -- withdrawn.

12 Did you have to talk to anybody after you authored the  
13 report about any findings in that report?

14 A. Same thing. We worked across the Fannie Mae organization  
15 and including interfacing with folks in D.C.

16 MR. CORDARO: Your Honor, with the Court's permission,  
17 I'd like to take him into the nuts and bolts of the 2005 if the  
18 objection -- I'll just ask the question.

19 MS. MAINIGI: Objection, your Honor. 2005? I don't  
20 understand.

21 THE COURT: What he's saying is he came back in effect  
22 in the later period, is my understanding of what has now been  
23 produced. But put a question. I can't deal with it in the  
24 abstract.

25 Q. So, as I asked you before, when the operational review was

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1 in the Western Management Center, in the earlier time, could  
2 you describe to the jury what would be the steps involved in  
3 that operational review with a lender like Countrywide?

4 MS. MAINIGI: Objection. Relevance.

5 THE COURT: Come to the side bar.

6 (Continued on next page)

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1 (At the side bar)

2 THE COURT: As I understand it, but correct me if I'm  
3 wrong, he knows what went on in that office in 2005 because he  
4 was the one actually doing the reports or signing off on them  
5 then.

6 The relevance to this case is that, subsequently,  
7 after he moved on, the reports coming out during the relevant  
8 time period were reviewed by him. And the point is so that the  
9 jury can assess what went into the report and what steps were  
10 taken, to describe from his personal knowledge what they were  
11 in 2005. And there is no reason to believe the inference it  
12 would be any different in 2006 or 2007 or whatever.

13 That's what I take it to be the proffer, yes?

14 MR. CORDARO: Yes. Just to clear the record, I  
15 misspoke when I said 2005. I don't think the witness testified  
16 to that at all. I think he testified they went up to 2006 and  
17 2007. It was my error.

18 THE COURT: Even closer. So what's the relevance  
19 objection?

20 MS. MAINIGI: Well, I guess it was a relevance  
21 objection and a vagueness objection, because I didn't  
22 understand the purpose of going through something that is 2005,  
23 2006, if we are talking about subsequently.

24 THE COURT: Because the point is when the reports are  
25 received in 2007, to make sense of them, one needs to know what

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1 steps were taken in the preparation of the report, which he has  
2 personal knowledge of from a period very shortly before. And  
3 it is a reasonable inference. You can of course cross-examine,  
4 but it is a reasonable inference that the same basic steps were  
5 taken in a immediately subsequent period. That's what I  
6 understand to be --

7 MS. MAINIGI: As long as I can cross-examine around  
8 that area.

9 THE COURT: Of course.

10 MR. MUKASEY: I think it was the 2005 reference that  
11 drew the objection.

12 THE COURT: Clarify that as well.

13 (Continued on next page)  
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(In open court)

Q. Mr. Sobczak, you testified previously about the time period that the operational reviews were in the regional centers, do you recall that testimony?

A. I did.

Q. Can you give us again what that time period was as you understood it?

A. As I remember it, it was when I started in 1997, and ended in approximately the 2006, 2007 time period.

Q. Mr. Sobczak, could you take us through the steps that your team would undertake in conducting an operational review of a lender such as Countrywide when it was in the regional side.

A. We would schedule the review, we would send out a prework questionnaire. The lender completed the prework questionnaire attaching any relevant documents. Our team went out to understand how loans are underwritten, how the organization worked, talked to the management, retrieved sample reports, we brought that information back. Several weeks later, we issued a report of our visit, our findings. Our engagement or our findings letter went out to the customer, which may have had included recommendations for improvement and specific things a lender needs to do. The responsibility for ensuring those findings were addressed was ours. And it was concluded.

Q. You mentioned underwriting in that explanation. Do you recall that?

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1 A. Yes.

2 Q. Why was it important to understand underwriting during  
3 these operational reviews?

4 A. The nature of the person, the skill sets of the person, the  
5 training that went into the underwriting team, the authority  
6 levels, not all underwriters were eligible, for example, to do  
7 all loan products or all loan amounts. And the management  
8 controls, especially the quality controls, that a lender had in  
9 place.

10 Q. Based on your understanding, why was it important for you  
11 to gain an understanding of that information you just described  
12 as part of the operational review?

13 A. So it goes back to infrastructure. A lender with excellent  
14 infrastructure or sufficient infrastructure was deemed able to  
15 originate quality mortgages.

16 Q. Once the operational review -- withdrawn.

17 Once the on-site visit concluded, what would happen  
18 next?

19 A. Presuming we were done with the operational reviews,  
20 including remediating any findings or lender taking action that  
21 we had recommended, or mandated, the day-to-day relationship  
22 then takes over.

23 Q. By the day-to-day relationship, what do you mean?

24 A. The normal -- the normal customer asks of individual  
25 questions around loans, new products, data sharing, the

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1 management to management interface, or the engagement that I  
2 talked about prior.

3 Q. You made a reference before to a report that you authored.  
4 Do you recall that?

5 A. Yes.

6 Q. Could you just explain to the jury what that report was and  
7 what it contained?

8 A. Well, that was the operational review. I wrote some of the  
9 passages in it, I approved or edited contributions of others on  
10 my team, and I discussed that report with my counterparts at  
11 Countrywide.

12 Q. When the operational reviews switched over to the  
13 centralized office, could you explain what involvement, if any,  
14 you had at that point?

15 A. So my involvement and my team's involvement started when  
16 the review was completed. When the findings letter, when the  
17 engagement letter was delivered to Countrywide or any lender.  
18 If there were actions that a lender needed to take around  
19 underwriting, for example, my team would work with a lender's  
20 team ensuring those actions were completed.

21 Q. In connection with any operational review, did you ever  
22 hear of something called the High-Speed Swim Lane or the  
23 Hustle?

24 A. No, I didn't.

25 Q. You made reference earlier to communications that you had

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1 with the lender that had nothing to do with operational review.

2 Do you recall that?

3 A. Yes.

4 Q. Okay. So, putting aside operational review, how often did  
5 you communicate with employees at Countrywide in 2007, 2008?

6 A. There was daily communication. Whether or not I personally  
7 did it or someone on my team did it and relayed the results of  
8 those conversations to me.

9 Q. In connection with those conversations, did you ever learn  
10 from anyone at Countrywide that FSL was using a process known  
11 as the High-Speed Swim Lane or the Hustle?

12 MR. MUKASEY: Objection. "Those conversations" is  
13 vague in light of the previous answer.

14 THE COURT: No, I think for these purposes, given what  
15 I anticipate is the likely answer, that's not a problem. If  
16 the answer is different than what I anticipate, then -- you may  
17 answer the question.

18 A. Could you ask it again?

19 Q. Sure. Well, let me step back. Did your conversations with  
20 Countrywide employees take place in 2007 and 2008?

21 A. Yes.

22 Q. During those conversations, were you ever told by anyone at  
23 Countrywide that about a loan origination process known as the  
24 High-Speed Swim Lane or the Hustle?

25 A. No, I wasn't.



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1 Q. Were you ever told about something called the HSSL?

2 A. No.

3 Q. Did you ever learn about anything called the HSSL in  
4 connection with an operational review?

5 A. No.

6 Q. In your capacity in risk management, would you have  
7 considered it important to know about a loan origination  
8 process called the High-Speed Swim Lane?

9 MS. MAINIGI: Objection.

10 THE COURT: Sustained.

11 Q. In your capacity in risk management, did you consider it  
12 important or not to know about loan origination processes that  
13 lenders were using?

14 MS. MAINIGI: Objection.

15 THE COURT: Overruled.

16 A. It was important.

17 Q. Why was it important?

18 A. It goes to the issue of infrastructure. And what I had  
19 said earlier, lenders with good infrastructure usually produce  
20 quality mortgages.

21 Q. In connection with your position in risk management, would  
22 you have considered it important for you to know if a lender  
23 was using a loan origination process that was designed to  
24 increase the speed from application to funding?

25 MS. MAINIGI: Objection.

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1 MR. MUKASEY: Objection.

2 THE COURT: Overruled.

3 A. Speed is an aspect, and speed does not necessarily result  
4 in a quality indicator. I look at speed in underwriting, or I  
5 look at speed in loan origination as a good thing. Provided  
6 that the controls governing the decisions, if we are -- if the  
7 lender is going to originate that mortgage or not are not  
8 compromised.

9 Q. If in your capacity as a risk manager, would you have  
10 considered it important for you to know if a lender was using a  
11 loan origination process that not only was seeking to increase  
12 the speed of the loans but also was if that -- withdrawn.

13 In your capacity as loan origination manager, would  
14 you have deemed it important to know if a lender was using a  
15 loan origination process that increased speed at any expense of  
16 quality?

17 MS. MAINIGI: Objection.

18 MR. MUKASEY: Objection.

19 THE COURT: Sustained.

20 Q. In your capacity as the loan -- as a credit risk manager,  
21 would you have deemed it important to know if the lender was  
22 utilizing a loan origination process that was sacrificing  
23 quality in any way?

24 MS. MAINIGI: Objection.

25 MR. MUKASEY: Objection.

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1 THE COURT: I will permit that.

2 MS. MAINIGI: Your Honor, could we ask for a side bar,  
3 please.

4 THE COURT: Yes.

5 (Continued on next page)

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Sobczak - direct

1 (At the side bar)

2 MR. MUKASEY: I'll give you my ground. My ground is  
3 argumentative. "Sacrificing" is a characterization, not a  
4 request for a factual answer. It is imposing argument into the  
5 question.

6 THE COURT: That's why I was hesitating. I thought it  
7 was otherwise a perfectly acceptable question. But with this  
8 witness who very clearly cannot be led, it seemed to me that  
9 the use of one arguably argumentative word did not negate the  
10 question. But I did consider that.

11 MS. MAINIGI: Two bases, your Honor. One, there is no  
12 evidentiary basis that's been established in the record for any  
13 of the hypotheticals he's asking.

14 THE COURT: I don't agree with that at all. How can  
15 you say that?

16 MS. MAINIGI: Not the general manner --

17 THE COURT: The entire thrust of a portion of the  
18 government's case has been that the Hustle program was designed  
19 to and did sacrifice and reduce quality while pretending that  
20 it was not doing that. And that, if anything, it was enhancing  
21 quality. There has been ample evidence from which the jury  
22 could, if it wished, could infer that. There is obviously  
23 evidence to the contrary. So, I don't see how that objection  
24 can stand.

25 MS. MAINIGI: Your Honor, it's very general what

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1 they're putting into the record. It is not specifics really.

2 THE COURT: Yes. But the problem with that is, if you  
3 ask a question about, as he did, about is it important to you  
4 to know about speed, the witness will say, in effect, as every  
5 witness is going to say, you can't tell in isolation. You have  
6 to know the entire way the program operated to assess whether  
7 it is something that is a sham or not.

8 And, therefore, the only really appropriate -- I  
9 wouldn't say the only appropriate question. But a totally  
10 appropriate question is taking the program as a whole, did it  
11 reduce quality and was that important to you. And that's in  
12 effect the question he's now asking.

13 MR. MUKASEY: Judge --

14 MS. MAINIGI: Secondly, your Honor, I believe your  
15 Honor indicated that the purchase stream was important. And  
16 that these types of questions were only -- or answers were only  
17 significant from someone that was in the purchasing stream.  
18 And I don't believe we've established that.

19 THE COURT: No, I think I didn't limit it to the  
20 purchasing stream. What I said was, with an earlier witness  
21 who was totally divorced from anything remotely connected with  
22 the process, I excluded some questions there. But this guy is  
23 not in that situation. He had daily contact with Countrywide.  
24 The other witness where this came up is where the witness had  
25 no contact with Countrywide. Here is a witness, who, by his

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Sobczak - direct

1 own testimony, is having daily conversations with Countrywide.

2 MR. MUKASEY: Your Honor, if I may. The prior answer  
3 when Mr. Cordaro posed the question, came from the witness  
4 something to the effect of speed is sometimes a good thing.  
5 Sometimes I look for speed as long as speed goes hand in hand  
6 with quality.

7 THE COURT: Right.

8 MR. MUKASEY: Imposition of the word "sacrifice" of  
9 the government really leads him to --

10 THE COURT: You want to use the word "reduce"?

11 MR. CORDARO: I can use a different word.

12 (Continued on next page)

DA4TBAN3

Sobczak - direct

1 (In open court)

2 MR. CORDARO: May I proceed, your Honor?

3 THE COURT: Yes.

4 BY MR. CORDARO:

5 Q. Mr. Sobczak, in your accounts risk management capacity,  
6 would it have been important for you to know if a lender was  
7 utilizing a loan origination procedure that -- withdrawn.

8 In your capacity in risk management, would it have  
9 been important for you to know if a lender was utilizing a loan  
10 origination process that was reducing quality in any way?

11 A. Yes, it would be.

12 MR. MUKASEY: Objection.

13 Q. Why?

14 THE COURT: I'm sorry?

15 MR. MUKASEY: I objected to the question, Judge.

16 THE COURT: For reasons different than the one stated  
17 at side bar?

18 MR. MUKASEY: To preserve the record to that question.

19 THE COURT: Well, I thought everything said at the  
20 side bar is preserved, but I'm delighted to overrule your  
21 objection again.

22 MR. CORDARO: I'll put the question again, your Honor.

23 THE COURT: He answered the question. I think the  
24 objection came too late. But in any event, the objection is  
25 preserved, the overruling is preserved, and the answer is

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Sobczak - direct

1 preserved.

2 And the answer was "Yes," correct?

3 THE WITNESS: Yes.

4 Q. Why was it important?

5 A. It goes back to what my job was responsible for knowing and  
6 doing. It was important for me to know how lenders did  
7 business under loans and originated mortgages so I could  
8 critique its ability to deliver investment quality mortgages to  
9 Fannie Mae.

10 Q. You testified earlier about variances. Do you recall that?

11 A. Yes.

12 Q. Could you just refresh everybody's recollection to what a  
13 variance is?

14 A. A variance is an expansion and sometimes a relaxation of  
15 standard guide requirements, so if a guide required certain  
16 actions to be taken or limited loans to certain terms, lenders,  
17 through the variance process would ask for some relief from  
18 those conditions.

19 Q. Did you have any involvement in Countrywide variances?

20 A. Yes, I did.

21 Q. Did that involvement span 2007/2008?

22 A. Yes.

23 Q. Would you explain what that involvement was to the jury?

24 A. Specifically for Countrywide, Countrywide had over a  
25 hundred variances, and at that period of time, including



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Sobczak - direct

1 rolling over into 2008, Countrywide and Bank of America entered  
2 into a definitive mortgage -- or a definitive merger agreement,  
3 and Bank of America was interested in understanding the  
4 variances, as again exceptions to the standard selling guide,  
5 that Countrywide had. And my team and I ensured that all the  
6 variances were up to date. We collapsed the variances which  
7 are no longer appropriate, and we presented that work to both  
8 Countrywide and Bank of America. In short, there was a  
9 massive -- a significant, there was a significant review and  
10 clean up of the master contract.

11 MS. MAINIGI: Your Honor, I move to strike,  
12 irrelevant.

13 THE COURT: Well, let me hear the next question then I  
14 will be able to tell.

15 Q. Putting aside everything you just told us about the clean  
16 up, did you have any other role prior to that with respect to  
17 variances?

18 A. Responding to Countrywide's request for variance  
19 exceptions.

20 Q. Could you explain what you mean by responding to  
21 Countrywide's request for exemptions?

22 A. So Countrywide and all lenders would approach Fannie Mae  
23 for special considerations, it may have been a new product, it  
24 may have been a relaxation of a credit score requirement, it  
25 may have been a relaxation of documentation requirements for a

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Sobczak - direct

1 specific loan product, and my team and I would assess those  
2 requests and determine whether or not they would be entertained  
3 or are feasible at all at Fannie Mae.

4 MS. MAINIGI: Your Honor, I just request that that  
5 prior answer be stricken, please.

6 THE COURT: Well, I'm still actually mulling on that  
7 because of the follow-up questions, but I hope counsel can  
8 bring it to a head fair -- in the next few questions so I can  
9 make that ruling one way or the other.

10 Q. Mr. Sobczak, what specifically did you do in connection  
11 with the variances that you just discussed in your previous  
12 answer?

13 MS. MAINIGI: Objection.

14 THE COURT: Let's have a side bar, we'll sort it out.

15 (Continued on next page)

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DA4TBAN3

Sobczak - direct

1 (At side bar)

2 THE COURT: It's very unclear where this is going.

3 MR. CORDARO: Your Honor, the long answer that the  
4 witness gave, the one that drew the objection, I'm not going  
5 into that at all. I wanted to know was what his role was in  
6 terms of variances with Countrywide during the period because  
7 those are part of the contract or there are exceptions to the  
8 contract, and whether or not the issues he has been discussing  
9 with respect to process would have been important to him in  
10 connection with that role.

11 MR. MUKASEY: During what time period?

12 MS. MAINIGI: That was my objection.

13 THE COURT: So I will sustain the objection to the  
14 previous question and answer that at the time that objection  
15 was made, and then --

16 MS. MAINIGI: And pending.

17 THE COURT: Everything else is unobjectionable, and  
18 give me the pending question.

19 MR. CORDARO: I think I asked what did you do, what --  
20 he said something like my team and I did.

21 THE COURT: So --

22 MS. MAINIGI: Our pending objection is vague and time  
23 period.

24 MR. MUKASEY: Ours as well.

25 THE COURT: The time frame is sustained, so rephrase

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Sobczak - direct

1 it.

2 (In open court)

3 THE COURT: So the question several questions back  
4 that led to the answer about the clean up, that objection is  
5 sustained, that answer is stricken.

6 OK, go ahead.

7 MR. CORDARO: Thank you, your Honor.

8 BY MR. CORDARO:

9 Q. During the 2007 to 2008 period, Mr. Sobczak, what did you  
10 do with respect to the issue of variances?

11 A. I was the primary recipient of the lenders that asked, I  
12 ensured that I understood precisely what the lender was asking  
13 for, I worked with my team in translating what the lenders  
14 asked to contract language, and my team worked with internal  
15 attorneys on drafted language that went back and forth between  
16 Countrywide and the risk management team.

17 Q. What sorts of things, if any, did you and your team  
18 consider during that process?

19 A. Related to a variance request, we would assess the lender's  
20 ability to produce mortgages under the terms and the conditions  
21 of that variance. We wanted to ensure that loans delivered  
22 under that variance could be identified for later performance  
23 true up, and we needed to ensure that the terms are specific  
24 and could be enforced.

25 Q. Based on your understanding, if a lender was utilizing a

DA4TBAN3

Sobczak - direct

1 loan origination process that reduced quality in any way, would  
2 that be important for you to know in the context of any  
3 requests for a variance?

4 MS. MAINIGI: Objection.

5 MR. MUKASEY: Objection.

6 THE COURT: Overruled. You may answer.

7 A. That would be important to know, yes.

8 Q. Why would it be important?

9 A. To use your word, reduced quality would be a concern, and  
10 if quality is reduced it would likely lead to possibly terms  
11 and conditions of a variance or other variances that may not be  
12 adhered to.

13 MR. CORDARO: May I confer briefly, your Honor?

14 THE COURT: Yes.

15 (Pause)

16 Q. At any time during your employment at Fannie Mae, did  
17 anyone tell you about a loan origination process known as the  
18 Hustle, the High-Speed Swim Lane or the HSSL?

19 MR. MUKASEY: Asked and answered.

20 THE COURT: Well, it appears that at least one of the  
21 government counsel is of the view that it somehow wasn't  
22 covered, so I will allow it.

23 MR. CORDARO: Thank you, your Honor.

24 A. None of those three terms I was familiar with.

25 THE COURT: OK. Cross-examination.

DA4TBAN3

Sobczak - cross

1 CROSS-EXAMINATION

2 BY MS. MAINIGI:

3 Q. Good afternoon, Mr. Sobczak.

4 A. Good afternoon.

5 Q. Mr. Sobczak, you indicated that you were familiar with the  
6 various contract agreements that existed between Countrywide  
7 and Fannie Mae, correct?

8 A. Correct.

9 Q. And there was an alliance agreement, correct?

10 A. Yes.

11 Q. A master agreement?

12 A. Yes.

13 Q. And a selling agreement?

14 A. Correct.

15 Q. And what would you refer to those three sets of agreements  
16 together?

17 A. The master contract.

18 Q. The master contract. Thank you.

19 Now Mr. Sobczak, the master contract does not dictate  
20 the title of the person who clears the loan to close, correct?

21 A. That is correct.

22 Q. And the master contract does not dictate the qualifications  
23 of the person who clears the loan to close, correct?

24 A. Correct.

25 Q. The master contract does not dictate the skill set of the

DA4TBAN3

Sobczak - cross

1 person who clears a loan to close, correct?

2 A. That is correct.

3 Q. The master contract does not speak to the compensation of  
4 the individuals involved with the loan process, correct?

5 A. That is correct.

6 Q. The master contract does not obligate lenders to discuss  
7 process changes, correct?

8 A. Correct.

9 Q. Now as someone involved with contracting, Mr. Sobczak, you  
10 are aware that Fannie Mae could have built all of these  
11 requirements into the master contract, correct?

12 MR. CORDARO: Objection.

13 THE COURT: Sustained.

14 Q. Mr. Sobczak, no underwriter does not mean no underwriting,  
15 correct?

16 MR. CORDARO: Objection.

17 THE COURT: Well, sustained as to form. Do you want  
18 to connect it up?

19 Q. Can someone other than a person with the title  
20 "underwriter" underwrite a loan in your view, Mr. Sobczak?

21 MR. CORDARO: Objection.

22 THE COURT: Still too disconnected. Sustained.

23 Q. Do you know what a loan processor is, Mr. Sobczak?

24 A. Yes, I do.

25 Q. Do you know what a loan specialist is?

DA4TBAN3

Sobczak - cross

1 A. Yes.

2 Q. Are those two terms synonymous in your view?

3 A. Yes, they are.

4 Q. What do you understand those two terms to mean, sir?

5 MR. CORDARO: Objection, your Honor.

6 THE COURT: Overruled.

7 A. A loan processor or a loan specialist is responsible for  
8 packaging a loan and sometimes approving or reviewing  
9 conditions under which the loan needs to be closed and  
10 approving a loan to close and fund.

11 Q. And was that your understanding in the 2007 to 2008 time  
12 period, Mr. Sobczak?

13 A. My understanding in that time period is that those titles  
14 were used interchangeably for the reasons that I mentioned.

15 Q. And loan specialists or loan processors in the 2007/2008  
16 time period cleared conditions on loans, is that correct?

17 MR. CORDARO: Objection, your Honor.

18 THE COURT: Overruled.

19 A. Yes.

20 Q. And in the 2007 to 2008 time period, loan processors and  
21 specialists cleared loans to close, correct?

22 MR. CORDARO: Objection, again, your Honor.

23 THE COURT: Ground?

24 MR. CORDARO: Could we have a side bar? I'm not clear  
25 on whose loan specialists.



DA4TBAN3

Sobczak - cross

1 MS. MAINIGI: I can tie it up, your Honor.

2 A. Could you repeat the question again?

3 Q. Sure. I'm going to withdraw that question and ask you  
4 another one, Mr. Sobczak. In the 2007/2008 time period -- but  
5 let me frame the question for you. You were asked some  
6 questions as to whether you knew about the High-Speed Swim  
7 Lane, correct, Mr. Sobczak?

8 A. That's correct.

9 Q. And you responded that you did not?

10 A. That's correct.

11 Q. In the 2007/2008 time period, were you aware of loan  
12 specialists clearing conditions and clearing loans to close at  
13 Countrywide?

14 A. Yes, I was.

15 Q. Could you explain that, please, sir.

16 A. In Countrywide's consumer markets division, that was the  
17 process that division used on some types of loans.

18 Q. And what type -- did you do operation reviews of the  
19 consumer market division in that time period, sir?

20 A. Yes.

21 Q. And what did you understand -- what types of loans was that  
22 process utilized for?

23 MR. CORDARO: Objection, your Honor, relevance.

24 THE COURT: I can't tell yet. I'll allow it until we  
25 hear the follow up, you may answer.

DA4TBAN3

Sobczak - cross

1 A. A loan that was seen by an automated underwriting system,  
2 Fannie Mae's Desktop operating system or Countrywide's CLUES  
3 system, that received an approval, those are the loans that a  
4 loan processor, a loan specialist was expected to gather  
5 conditions on and move to closing and funding.

6 Q. Were those prime loans, Mr. Sobczak?

7 A. Yes.

8 Q. Now as an underwriter and risk management person reviewing  
9 this process where loan processors and specialists cleared  
10 loans to close, was that process acceptable to you?

11 MR. CORDARO: Objection, relevance.

12 THE COURT: Well, overruled as to relevance, but  
13 sustained as to form.

14 But let me go back for a moment to a question just a  
15 minute ago, the question was about prime loans, what is a prime  
16 loan and what is a subprime loan?

17 THE WITNESS: There is not a one size fits all  
18 definition of either.

19 THE COURT: So when you were asked the question  
20 referring to the Countrywide CLUES system, et cetera, and you  
21 were asked the question were those prime loans and you said  
22 yes, what did you mean by that?

23 THE WITNESS: I meant as I knew Countrywide's consumer  
24 market division, and as I knew it to originate what it termed  
25 to be prime loans in the marketplace, I tied the two together

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Sobczak - cross

1 for my answer.

2 THE COURT: So what was your understanding of what was  
3 meant in that context by the term "prime loan?"

4 THE WITNESS: Prime loans were loans that did not go  
5 through Countrywide's subprime arm Full Spectrum.

6 THE COURT: So the only operational definition of  
7 prime was it wasn't subjected to the same Full Spectrum review  
8 as subprime?

9 THE WITNESS: I wouldn't say only, I would say that  
10 loans that Countrywide's consumer market division worked on  
11 were considered by it and by me to have a prime moniker to it.

12 THE COURT: Meaning? I'm still trying to, and I think  
13 the jury had this question, too, we understand that from your  
14 testimony and other testimony that there is no sort of fixed  
15 formal definition of prime and subprime, but we need to get a  
16 feel for what, in this context of Countrywide loans, there had  
17 been references to prime and subprime, what is your  
18 understanding of what was being conveyed?

19 THE WITNESS: I'll try to do my best. A borrower with  
20 very challenging credit history, a credit history that, for  
21 example, may have included a recent mortgage foreclosure or  
22 credit cards that went to collection, a low FICO score in the  
23 500 range, that was considered to be subprime loan due to  
24 borrower's past credit history.

25 A borrower that makes all their payments on time or

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Sobczak - cross

1 maybe didn't make all their payments on time but missed very  
2 few, is current on their mortgage, pays their auto loan, that  
3 would be rendered as a prime loan.

4 THE COURT: Do I understand from that -- withdrawn.

5 When these loans were presented to Fannie Mae by  
6 Countrywide, were they representative of a prime or subprime or  
7 were those terms not used?

8 THE WITNESS: Those terms were not used.

9 THE COURT: All right. Go ahead, counsel.

10 MS. MAINIGI: Thank you.

11 BY MS. MAINIGI:

12 Q. The process that was reviewed at Countrywide where loan  
13 specialists and loan processors cleared loans to close, was  
14 that process reviewed by the operational reviews that were  
15 conducted in 2005, 2006 and 2007, Mr. Sobczak?

16 A. Yes.

17 Q. And to your recollection, was there ever a finding in those  
18 operational reviews that that process was not acceptable?

19 A. Not to my recollection.

20 Q. So through the operational reviews, Fannie Mae was aware  
21 that Countrywide was using loan processors and loan specialists  
22 to clear loans to close, correct?

23 MR. CORDARO: Objection.

24 THE COURT: Overruled.

25 A. Yes.

DA4TBAN3

Sobczak - cross

1 THE COURT: Counsel, we're going to give the jury a  
2 lunch break in about five minutes, so find a good spot.

3 MS. MAINIGI: Thank you.

4 Q. Mr. Sobczak are you familiar with the term "junior  
5 underwriter?"

6 A. Yes, I am.

7 Q. Do you view this term to be synonymous with loan  
8 specialists or loan processor?

9 A. I do.

10 Q. To your knowledge, do different lenders use those terms  
11 synonymously?

12 A. Interchangeably, yes.

13 Q. Now you were asked some questions about Full Spectrum, do  
14 you recall that?

15 A. Yes.

16 Q. Now at the time that you were doing operational reviews,  
17 Full Spectrum was a subprime shop, correct?

18 A. That is correct.

19 Q. And that's how you understood Full Spectrum, you understood  
20 it to be one of the divisions of Countrywide that processed  
21 subprime loans, correct?

22 A. Yes.

23 Q. And at some point you understood that the subprime market  
24 dried up in the 2007 time period, correct?

25 A. That's correct.

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Sobczak - cross

1 Q. And by that point -- and now at that point in time in the  
2 2007 time period, I believe you testified you came out of the  
3 operational review world, correct?

4 A. Yes.

5 Q. And you continued doing work with Countrywide on behalf of  
6 Fannie Mae and in other contexts, right?

7 A. That is correct.

8 Q. Is it fair to say that you, yourself, then were not  
9 intimately involved with the Full Spectrum Lending division of  
10 Countrywide when it moved over to being a prime shop?

11 MR. CORDARO: Objection.

12 THE COURT: Overruled.

13 A. That's a fair statement.

14 Q. Were there other people at -- excuse me, were there other  
15 people at Fannie Mae, however, that were perhaps more  
16 intimately involved with the Full Spectrum division of  
17 Countrywide when it became a prime shop?

18 MR. CORDARO: Objection.

19 THE COURT: Overruled.

20 A. I would expect that there was.

21 THE COURT: Do you know who or are you just  
22 speculating?

23 THE WITNESS: I am going to say that Fannie Mae was  
24 interested in subprime business, and it organized subprime  
25 initiative to get more of that business. My boss was part of

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Sobczak - cross

1 that initiative, others in DC were part of that initiative.  
2 That's my only and direct or indirect recollection.

3 THE COURT: The question was: Were there other people  
4 at Fannie Mae that were perhaps more intimately involved with  
5 the Full Spectrum division of Countrywide when it became a  
6 prime shop? And your answer was: I would expect that there  
7 was.

8 And my question was, I was unclear from that answer  
9 were you saying you're speculating or did you know whether  
10 there was someone who was more involved? If so, who?

11 THE WITNESS: So at that point in time, my model of  
12 the operational review business, I would think that whoever  
13 took over the operation reviews after me would want to have an  
14 understanding of how Full Spectrum was doing business, that led  
15 to my answer.

16 THE COURT: So who was that, who took over?

17 THE WITNESS: It was the LARC team, I can't remember  
18 what the acronym stood for, but the director of that team was  
19 Romona O'Bannon.

20 THE COURT: OK.

21 BY MS. MAINIGI:

22 Q. Mr. Sobczak, if you had known in the fall of 2007 that the  
23 Full Spectrum Lending division, as a result of its conversion  
24 to a prime shop, began to use loan specialists to clean certain  
25 low risk loans to close, what would you have thought about

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Sobczak - cross

1 that?

2 MR. CORDARO: Objection.

3 THE COURT: I think he would probably think that it's  
4 time to give the jury their lunch break.

5 So ladies and gentlemen, we're going to give you until  
6 2 o'clock. We're going to handle this, though, as yesterday  
7 because I have several matters late in the afternoon. So we  
8 will only sit until a few minutes before four, but we will not  
9 take a mid-afternoon break. So we'll see you at 2 o'clock.

10 (Jury not present)

11 THE COURT: I want to spend a little time talking with  
12 my friends from Seton Hall, but if there's -- I know we have a  
13 number of items I'm going to have to cover before the end of  
14 the day, probably after we excuse the jury, but is there  
15 anything counsel needs to raise right now?

16 OK. Very good. We'll see you at 2 o'clock.

17 (Luncheon recess taken)

18 (Continued on next page)



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Sobczak - cross

1 AFTERNOON SESSION

2 (2:10 p.m.)

3 (Jury present)

4 THE COURT: Counsel.

5 MS. MAINIGI: Thank you, your Honor.

6 BY MS. MAINIGI:

7 Q. Good afternoon, Mr. Sobczak.

8 A. Good afternoon.

9 Q. During your direct examination with Mr. Cordaro, you  
10 discussed your knowledge of variance. Do you recall that?

11 A. Yes, I did.

12 Q. Now Fannie Mae granted a variance to Countrywide for CLUES  
13 to be used by Countrywide, is that correct?

14 A. Correct.

15 Q. And that wasn't in the '07, '08 time period but was in fact  
16 many years ago, is that true?

17 A. Yes.

18 Q. And it also granted variances to other lenders to allow  
19 them to use their proprietary underwriting systems, correct?

20 A. Yes.

21 Q. Now CLUES was Countrywide's automated underwriting system,  
22 is that right, Mr. Sobczak?

23 A. Yes, it is.

24 Q. And CLUES was the underwriter on prime CLUES accept loans,  
25 correct?

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Sobczak - cross

1 MR. CORDARO: Objection.

2 THE COURT: Ground?

3 MR. CORDARO: Vague with respect to underwriter and  
4 also lack of foundation.

5 THE COURT: Overruled.

6 A. CLUES rendered an approve or refer decision based on  
7 information it evaluated.

8 Q. And so on a prime CLUES accept, was CLUES the underwriter?

9 A. Yes.

10 Q. And you understood this in your role in underwriting and  
11 risk at Fannie Mae, is that correct?

12 MR. CORDARO: Objection.

13 THE COURT: Overruled.

14 A. That's correct.

15 Q. Now Mr. Sobczak, was the fact that a trained loan  
16 specialist cleared an AUS approved loan to close instead of an  
17 underwriter ever the basis to not purchase a loan?

18 A. That was never a basis for not purchasing a loan.

19 Q. Did the fact that a loan specialist cleared a loan to close  
20 mean that there was no underwriting of the loan?

21 MR. CORDARO: Objection.

22 THE COURT: Overruled.

23 A. Because a loan specialist closed a loan did not mean that  
24 loan was not underwritten.

25 Q. You mentioned -- you spoke for a while, Mr. Sobczak, about

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Sobczak - cross

1 the on-site reviews. Do you remember that this morning?

2 A. Yes.

3 Q. Was there also something called a post-purchase review  
4 process?

5 A. Yes, there was.

6 Q. And could you describe that process for us, please.

7 A. The post-purchase review process reviewed recent Fannie  
8 Mae -- was designed to review deliveries across all lenders,  
9 and that post-purchase review process was conducted in our  
10 Dallas office.

11 Q. Did the post-purchase review process review actual loan  
12 files from the lenders?

13 A. Yes, considered to be a re-underwriting of a loan that was  
14 already delivered to Fannie Mae.

15 Q. And how was this -- I assume it was a sample of loans that  
16 was selected, is that true?

17 A. Yes, that's true.

18 Q. How was the sample selected?

19 A. There were three ways a sample was selected. The first  
20 segment was sheer random reviews that had a statistical  
21 significance, so the findings based on the small sample could  
22 be inferred across a larger population of loans. The second  
23 sample was known as a targeted review, where Fannie Mae wanted  
24 to drill down on certain types of loans. For example, it could  
25 be high loan to value lens with low credit scores. And the

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Sobczak - cross

1 third sample was known as a pre-foreclosure or post-foreclosure  
2 review, and these lens were either in danger of imminent  
3 default or had already defaulted.

4 Q. In the context of these re-underwriting reviews, what was  
5 "significant finding," what does that term mean?

6 MR. CORDARO: Objection, relevance.

7 THE COURT: Overruled.

8 A. Fannie Mae's definition of a significant finding was that  
9 if Fannie Mae wanted to pursue a repurchase of a loan, it  
10 believed it had the grounds to do that because there was some  
11 flaw in that loan.

12 Q. Mr. Sobczak, what was the national significant finding rate  
13 in the 2007/2008 time period?

14 MR. CORDARO: Objection.

15 THE COURT: Sustained.

16 MS. MAINIGI: Your Honor, may I have a side bar,  
17 please?

18 THE COURT: Yes.

19 (Continued on next page)  
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DA4TBAN3

Sobczak - cross

1 (At side bar)

2 MS. MAINIGI: Your Honor, this is the exact same  
3 question that you allowed us to ask to the Freddie Mac  
4 representative the other day, there was a NIC or NAC rate that  
5 Freddie Mac used, it's comparable to this. You allowed us to  
6 ask what essentially that rate was because it's the equivalent  
7 of the industry standard, and that was to rebut the opening.  
8 So we asked the Freddie Mac person that rate, and he gave us a  
9 rate of 18 to 20 percent. I'm now trying to get the same  
10 information for Fannie Mae.

11 THE COURT: But first of all, my recollection is that  
12 there were questions that had already come out about NIC or  
13 NAC.

14 MS. MAINIGI: One or the other, can't remember which.

15 THE COURT: And that hasn't come out here, but let me  
16 hear from the government.

17 MR. CORDARO: Your Honor, we think this is irrelevant  
18 because it seems they're trying to suggest that they should  
19 have been able to discover the Hustle through the defect rate,  
20 which is a default rate, whatever that rate stands for, it's a  
21 blaming a victim argument.

22 THE COURT: I'm a little concerned about that,  
23 although you opened this a little bit in your direct when you  
24 got into -- one of your questions, maybe not intentionally,  
25 elicited a default answer. Now I'm not going to use that as a

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Sobczak - cross

1 device to open what is otherwise closed.

2 MS. MAINIGI: I'm not saying that he did anything, I'm  
3 happy to ask it as a direct question. I'm not suggesting that  
4 he opened the door in his direct examination do ask this, I'm  
5 saying this balances me out here because we asked the question  
6 to Freddie Mac and there was a reason that your Honor allowed  
7 it to be asked.

8 THE COURT: This is a funny argument. You're saying  
9 is you can't actually remember what the reason was.

10 MS. MAINIGI: I do know what the reason was, the  
11 reason was --

12 THE COURT: Because my recollection, for what its  
13 worth, which could be totally wrong, is that it was responsive  
14 to something in the direct testimony.

15 MS. MAINIGI: With all due respect, your Honor,  
16 because I looked at it --

17 THE COURT: That's not fair.

18 MS. MAINIGI: I can't get in your Honor's mind, but as  
19 I believe the last --

20 THE COURT: There's nothing there.

21 MR. SULLIVAN: It was Mr. Armand in his opening  
22 statement had offered an industry standard rate of four to five  
23 percent, and you allowed me then to ask --

24 THE COURT: Yes, yes. OK. Thank you, that is exactly  
25 right. So I will --

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Sobczak - cross

1 MS. MAINIGI: Now I'm asking it to Fannie Mae.

2 THE COURT: That is exactly right. Thank you for  
3 recalling that, and the fact that you had the advantage of  
4 looking at the transcript isn't fair, but nevertheless that  
5 will warrant it. So on that, I will allow this question.

6 MS. MAINIGI: Thank you, your Honor.

7 (Continued on next page)

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DA4TBAN3

Sobczak - cross

1 (In open court)

2 BY MS. MAINIGI:

3 Q. Mr. Sobczak, are you familiar with the national significant  
4 finding rate for the 2007/2008 time period?

5 A. Yes, I am.

6 Q. What is that rate, sir?

7 A. It's approximately 25 percent, give or take a couple of  
8 percentage points.

9 Q. Can you explain to us what that means?

10 A. A significant finding, as I mentioned, is a potential  
11 grounds for Fannie Mae asking a lender to repurchase a loan  
12 that they delivered. So 25 percent would mean that  
13 approximately one in four loans delivered to Fannie Mae had  
14 some flaw, or should Fannie Mae choose, it could choose to have  
15 a lender repurchase that loan.

16 Q. And that rate is across all lenders?

17 A. National significant findings rate, yes.

18 Q. So that is essentially like an industry standard rate or  
19 something of that sort?

20 A. That is Fannie Mae -- that's Fannie Mae's rate for the  
21 deliveries it received.

22 Q. I take it then, Mr. Sobczak, there was no expectation of a  
23 zero defect rate, correct?

24 MR. CORDARO: Objection.

25 THE COURT: Sustained.



DA4TBAN3

Sobczak - cross

1 Q. Now you have knowledge of the rep and warrant process,  
2 correct, Mr. Sobczak?

3 A. Correct.

4 Q. And I believe you testified on direct that not all loans  
5 perform, is that right?

6 A. That's correct.

7 Q. Is it fair to say that you knew at the time of the rep and  
8 warrant of a certain set of loans that a certain percentage of  
9 those loans would turn out to be defective?

10 MR. CORDARO: Objection.

11 THE COURT: Sustained.

12 Q. The remedy, Mr. Sobczak, for defective loans is the  
13 repurchase remedy, is that fair?

14 MR. CORDARO: Objection.

15 THE COURT: Sustained.

16 A. That is one remedy.

17 THE COURT: No.

18 THE WITNESS: I'm sorry.

19 Q. What are -- is a remedy -- strike that.

20 Let me switch over to something else, Mr. Sobczak. As  
21 a general matter, are refinancings less risky than purchases?

22 A. Yes.

23 Q. Do refinancings make it more likely that a borrower can pay  
24 back its loan?

25 MR. CORDARO: Objection.

DA4TBAN3

Sobczak - cross

1 THE COURT: Sustained. I note that in the previous  
2 question, the reporter, who was otherwise absolutely perfect,  
3 has the question down, quote: Are refinancings less Ricky than  
4 purchases? I note that, near as I can, tell Ricky is not a  
5 party to this case.

6 MS. MAINIGI: Your Honor, what was the basis for  
7 sustaining the objection?

8 THE COURT: I don't see the relevance.

9 MS. MAINIGI: Well --

10 THE COURT: If you want to come to side bar, I will  
11 hear you on that.

12 MS. MAINIGI: I will come to the side bar on that,  
13 your Honor.

14 (Continued on next page)

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DA4TBAN3

Sobczak - cross

1 (At side bar).

2 MS. MAINIGI: All the loans that went through  
3 High-Speed Swim Lane were refinancings.

4 THE COURT: Is that in evidence?

5 MS. MAINIGI: I believe it is with some prior  
6 witnesses. All you have to do --

7 MR. MUKASEY: I think Ed O'Donnell mentioned that.

8 THE COURT: I had not --

9 MS. MAINIGI: All of the refinancings.

10 MR. MUKASEY: I can't swear to it.

11 THE COURT: Let me hear if there is any other  
12 objection.

13 MR. CORDARO: Could I confirm that's what  
14 Mr. O'Donnell said?

15 THE COURT: That's the question. I had not recalled  
16 that.

17 MS. MAINIGI: That's OK. I don't know why you haven't  
18 memorized everything.

19 MR. CORDARO: My understanding, from what I heard of  
20 Mr. O'Donnell's testimony, is that he testified that there  
21 was -- if it was a purchased transaction it was supposed to be  
22 a kick out, but there's no guarantee that there was a kick out  
23 from the High-Speed Swim Lane, so some of them may have been  
24 in. That's my understanding from what I gathered.

25 MS. MAINIGI: But the flip side of the theory is

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Sobczak - cross

1 everything was refinanced.

2 MR. MUKASEY: It's the converse of that.

3 THE COURT: I will allow it. If it turns out that  
4 counsel's recollection is wrong and there no predicate for it,  
5 we'll strike it later.

6 MS. MAINIGI: That's fine, your Honor. I'm happy to  
7 provide the Court with a transcript.

8 (Continued on next page)

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(In open court)

BY MS. MAINIGI:

Q. Mr. Sobczak, do refinancings make it more likely that a borrower can pay back its loan?

A. I would consider it to be more likely because the borrower has a history already of making a mortgage payment.

Q. And is that better for Fannie Mae?

MR. CORDARO: Objection.

THE COURT: Well, as phrased, sustained.

Q. To your understanding, Mr. Sobczak, as someone in risk management, is that better for Fannie Mae?

MR. CORDARO: Objection.

THE COURT: Well, "it's better for Fannie Mae" is not a very precise term.

Q. Is that -- would refinancings -- the fact that a borrower can pay back its loan, does that put Fannie Mae in a better economic position?

A. Yes.

MS. MAINIGI: May I approach, your Honor?

THE COURT: Yes.

Q. Mr. Sobczak, I handed you a packet of several documents. If you could take a look at the one on top, which is marked DX1319, please, sir.

A. I have it.

Q. This is an email from you to several of your colleagues at

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1 Fannie Mae dated February 1st, 2008, is that correct?

2 A. That's correct.

3 Q. And this email contains an attachment, the new CLUES score  
4 card that has been provided to you by Countrywide, is that  
5 fair?

6 A. That is fair.

7 MS. MAINIGI: Your Honor, I ask DX1319 be admitted.

8 MR. CORDARO: Objection, your Honor, foundation on the  
9 attachment.

10 THE COURT: Sustained.

11 Q. Mr. Sobczak, is there an attachment entitled summary of  
12 score card and underwriting process changes to DX1319?

13 A. Yes, that's the header of document in this PowerPoint.

14 Q. And I see some handwriting on this document. Is that your  
15 handwriting, sir?

16 A. I recognize it as mine, yes.

17 MS. MAINIGI: Your Honor, I ask again for DX1319 to be  
18 admitted.

19 MR. CORDARO: Objection, your Honor, lack of  
20 foundation, also relevance.

21 MS. MAINIGI: Your Honor, I can establish some more  
22 foundation for the document if the government would like.

23 THE COURT: Go ahead.

24 Q. Mr. Sobczak, do you recall having received this document in  
25 the February 2008 time period?

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1 A. Yes.

2 Q. And was it that -- was Countrywide tightening up its CLUES  
3 score card in this time period?

4 MR. CORDARO: Objection.

5 THE COURT: Sustained, but let me ask you this, what  
6 is a CLUES score card?

7 THE WITNESS: The algorithm, the empirical math behind  
8 CLUES is contained in this score card. So consider it to be  
9 the math that analyzes the inputs into CLUES, LTV, credit  
10 score, loan type, credit profile.

11 THE COURT: And what is CHL?

12 THE WITNESS: That's an abbreviation for Countrywide  
13 Home Loans.

14 THE COURT: And was this score card received at your  
15 request, furnished at your request?

16 THE WITNESS: I remember this document as an output of  
17 an earlier conversation where Countrywide talked broadly about  
18 the score card changes it was making, and this document is a  
19 follow up to that conversation.

20 THE COURT: So did you ask for this or was it sent  
21 to -- was it volunteered?

22 THE WITNESS: I'm not sure if I asked for it or it was  
23 volunteered, but it was a collaborative effort on both sides.

24 THE COURT: All right. So let me ask defense counsel,  
25 are you offering this score card for its truth or merely for

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1 the fact that it was received by Mr. Sobczak or something else?

2 MS. MAINIGI: The latter, your Honor.

3 THE COURT: All right. I will receive it then.

4 (Defendant's Exhibit 1319 received in evidence)

5 THE COURT: So ladies and gentlemen, this is not --  
6 the data on this may or may not be accurate. The relevance, if  
7 any, is simply that it was received by Fannie Mae.

8 MS. MAINIGI: Thank you, your Honor.

9 BY MS. MAINIGI:

10 Q. If we could turn to page 1 of the deck, please.

11 Mr. Sobczak, very high level, what was your  
12 understanding of what Countrywide was attempting to do here?

13 A. My understanding of Countrywide's attempt was to reengineer  
14 its score card, in other words, recalibrate its model to narrow  
15 the loans, the types of loans that received a CLUES approval.

16 Q. And was that in response to the changing guidelines in the  
17 industry?

18 A. Yes.

19 Q. Were other lenders doing the same thing at this point in  
20 time?

21 A. Yes.

22 Q. Did Fannie Mae support Countrywide in doing this?

23 A. Yes.

24 Q. You can set that aside, Mr. Sobczak.

25 If could you take a look at the next document, please,



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Sobczak - cross

1 sir, DX59. DX59 is another presentation that was made to  
2 you -- made to Fannie Mae by Countrywide entitled manufacturing  
3 quality initiatives, and dated April 24, 2008. Do you  
4 recognize this document?

5 MR. CORDARO: Objection, your Honor. Counsel is  
6 testifying as to the document.

7 A. I recognize --

8 THE COURT: Excuse me.

9 Yes, I think we have to restart.

10 Q. Mr. Sobczak, what is DX59?

11 A. It appears to be -- or from my perspective it is a  
12 Countrywide PowerPoint that summarizes quality control based  
13 initiatives that Countrywide has either implemented or is  
14 planning to implement.

15 Q. What is the date of DX59, sir?

16 A. April 24, 2008.

17 Q. Was a presentation made to you by Countrywide related to  
18 DX59?

19 A. I'm going to say yes, but I can't verify that April 24th is  
20 the date.

21 Q. So it was maybe on or around April 24th, sir?

22 A. It was more likely after April 24th.

23 Q. But you do recall a presentation was made by Countrywide to  
24 you and perhaps others at Countrywide?

25 A. Yes.

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1 Q. Was that an in-person presentation?

2 A. Yes.

3 Q. Opening up this presentation, I see some handwriting. Is  
4 that handwriting yours?

5 A. No.

6 Q. Do you know whose handwriting it is?

7 A. I can't tell.

8 MS. MAINIGI: Your Honor, I offer DX59 into evidence  
9 without the handwriting.

10 THE COURT: And not for its truth.

11 MS. MAINIGI: Not for its truth, your Honor.

12 THE COURT: Received. You'll have to redact it.

13 MS. MAINIGI: Will do.

14 (Defendant's Exhibit 59 received in evidence)

15 BY MS. MAINIGI:

16 Q. At a high level, Mr. Sobczak, could you describe the  
17 manufacturing quality initiatives that Countrywide was  
18 undertaking?

19 A. It is a summary of various initiatives Countrywide was  
20 taking to reduce the risk associated with loans of that time  
21 period. And in this document it talks about improvements to  
22 fraud detection and evaluation correctness and certain  
23 reasonableness initiative tests related to stated income loans.

24 Q. This was provided by Countrywide to you in the April 2008  
25 time period, sir?

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Sobczak - cross

1 A. I can't vouch for April 2008, I'm thinking more May of  
2 2008.

3 Q. Got it. Thank you.

4 The next document, DX70, if you could take a look at  
5 that, sir. Could you identify that document for us, please?

6 A. Yes, this is something I authored. This is an email that  
7 definitely came from me.

8 Q. And how about the attachment, did that come from you as  
9 well?

10 A. This is an attachment that I prepared.

11 Q. And what is this email and document?

12 A. This is an email confirming our management meeting with  
13 Countrywide the following day, and this is a preview of the  
14 results and topics to be discussed the following day.

15 MS. MAINIGI: Your Honor, I offer DX70 into evidence.  
16 I note there was no hearsay objection at the time.

17 MR. CORDARO: Object on relevance grounds, your Honor.

18 MS. MAINIGI: I can ask some more questions about it,  
19 your Honor, if you would like.

20 THE COURT: Hold on a minute. You cleverly  
21 anticipated the hearsay objection.

22 I think you need some more questions on relevance.

23 Q. Mr. Sobczak, does this document have anything to do with  
24 Countrywide and Countrywide performance?

25 A. Yes, it does.

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1 Q. Could you explain to me what that is, sir?

2 A. It's relevant to Countrywide and its performance because it  
3 summarizes how Countrywide deliveries have recently performed.  
4 And there's a longer term look back on a wider range their  
5 deliveries performed. And it highlights -- further in the  
6 document it highlights in the document the types of loans that  
7 performed better than expected and the types of loans that  
8 performed worse than expected.

9 Q. And just so I understand, this document is a document that  
10 you put together on behalf of Fannie Mae, is that correct?

11 A. I put together as Fannie Mae's lead on the customer account  
12 risk team using data from general Fannie Mae.

13 Q. And you were able to assess how Countrywide's loans were  
14 doing for a particular time period, is that fair?

15 A. That's correct.

16 Q. And you were providing this information to Countrywide, is  
17 that fair?

18 A. Yes.

19 Q. And that process was part of the normal back and forth  
20 day-to-day process that you referenced earlier, is that fair?

21 A. Yes, it is.

22 MS. MAINIGI: Your Honor, I ask that DX70 be admitted.

23 MR. CORDARO: Your Honor, same objection, relevance.

24 THE COURT: Sustained.

25 Q. If you could take a look, sir, at DX396. DX396, what is

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Sobczak - cross

1 the title of that document, Mr. Sobczak?

2 A. DX396 is titled loan level notes.

3 Q. And does it appear to be a page from a loan file?

4 A. It could either be a page from a physical loan file or  
5 snapshot of a screen print associated with a loan file.

6 Q. But either way, it's something -- it's a page associated  
7 with a loan file?

8 A. Correct.

9 Q. In your role as -- in your various roles at Fannie Mae, on  
10 occasion would you have a reason to look at loan files?

11 A. I would only look at loan files if there was something  
12 related to a repurchase or something that related to an  
13 ineligibility.

14 Q. In the repurchase process you might look at a page from a  
15 loan file?

16 A. Yes.

17 MS. MAINIGI: Your Honor, I move DX396.

18 MR. CORDARO: Objection, your Honor, hearsay,  
19 foundation also relevance.

20 MS. MAINIGI: Your Honor, I would just -- I believe  
21 your Honor indicated before if there is an appropriate witness  
22 for a particular document that we could use any particular  
23 witness for that document if it made sense with it.

24 THE COURT: I'm not quite sure what you're saying.  
25 Are you saying you're offering this subject to connection

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Sobczak - cross

1 through a later witness or are you saying something else?

2 MS. MAINIGI: I'm saying that these notes are not  
3 notes that were necessarily reviewed by this particular  
4 witness.

5 THE COURT: I understand that.

6 MS. MAINIGI: But similar.

7 THE COURT: I see. Was this exhibit listed on the  
8 pretrial consent order?

9 MS. MAINIGI: Yes, your Honor.

10 THE COURT: Was any objection raised? Relevance is  
11 always automatically preserved, but was any other objection  
12 raised?

13 MS. MAINIGI: No, your Honor.

14 THE COURT: So the only objection is relevance. If  
15 that's the only objection --

16 MR. CORDARO: Excuse me, your Honor, we would like to  
17 check our exhibit list just to make sure.

18 THE COURT: Absolutely.

19 MR. CORDARO: Thank you, your Honor.

20 (Pause)

21 MR. CORDARO: Your Honor, the only thing we are  
22 wondering, it appears more than once on the exhibit list, we're  
23 not sure the objection -- it does not appear there's an  
24 objection listed here at 396, but if there was a duplicate --

25 THE COURT: Well, if there was a hearsay objection

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1 raised I might or might not sustain that, but since it appears  
2 that there was not, the only reserved objection is relevance.  
3 The objection is overruled. So 396 is received.

4 (Defendant's Exhibit 396 received in evidence)

5 MS. MAINIGI: Your Honor, may I publish?

6 THE COURT: Yes.

7 MS. MAINIGI: Alex, please blow up the middle text of  
8 that page.

9 BY MS. MAINIGI:

10 Q. Mr. Sobczak, these are loan level notes, correct?

11 A. Yes.

12 Q. And this is from a loan file that Fannie Mae had in its  
13 possession, correct?

14 MR. CORDARO: Objection.

15 MS. MAINIGI: I'll withdraw the question, your Honor.

16 Q. So if you take a look, Mr. Sobczak, at some of the  
17 information in there, it says CLUES report. Do you see that?

18 A. Yes, I do.

19 Q. And then there's a -- can you walk us through all the  
20 information that is after CLUES report, please?

21 MR. CORDARO: Objection, your Honor, document speaks  
22 for itself.

23 THE COURT: Well, I don't think so. You can briefly  
24 go through that.

25 A. It appears this loan was presented to CLUES, Countrywide's

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1 automated underwriting engine. That engine rendered an  
2 approved decision. The person that presented it to CLUES is  
3 Lisa Grover, and HSSL loan specialist. This appears to be a  
4 stated income loan where the borrower claimed \$3,000 a month,  
5 and Ms. Grover deemed that to be reasonable based on the \$1,400  
6 of reserves in the bank, the time of job of ten years, and a  
7 694 credit score.

8 Q. Thank you, Mr. Sobczak, you can set that aside, please.

9 Mr. Sobczak, in the Fannie Mae contract, is there a  
10 provision that relates to self-reporting?

11 A. Yes.

12 Q. Based on your knowledge and experience, in the 2007/2008  
13 time period, did lenders regularly self-report particular loans  
14 that appeared on their internal QC reports?

15 MR. CORDARO: Objection.

16 THE COURT: Ground?

17 MR. CORDARO: Relevance, your Honor, among others.

18 MS. MAINIGI: Your Honor, I'm happy to find if  
19 self-reporting is not relevant.

20 THE COURT: No, I think the point -- well, that's not  
21 the point. The question whether or not Countrywide was  
22 required by contract or otherwise to self-report is not  
23 affected by whether other lenders regularly did or did not do  
24 so. So sustained.

25 Q. Mr. Sobczak, based on your experience with Countrywide, did



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1 you think Countrywide had the infrastructure in place to  
2 originate and deliver investment quality loans?

3 MR. CORDARO: Objection.

4 THE COURT: Sustained.

5 MS. MAINIGI: I have no further questions, your Honor.

6 THE COURT: All right.

7 Counsel.

8 MR. MUKASEY: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. MUKASEY:

11 Q. Mr. Sobczak, my name is Marc Mukasey, I represent Rebecca  
12 Mairone over there.

13 You testified on direct, sir, that you had -- and I  
14 think these were your words -- contacts at Countrywide, is that  
15 correct?

16 A. That is correct.

17 Q. And Rebecca Mairone was not one of your contacts, am I  
18 right?

19 A. That is correct.

20 Q. And you also testified about meetings that you called face  
21 offs, is that right?

22 A. Yes.

23 Q. And you never sought to face off with Rebecca Mairone, did  
24 you?

25 A. I have never seen Rebecca Mairone.

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1 Q. And you never -- so you never actually faced off with her?

2 A. Correct.

3 Q. Have you ever spoken to Ms. Mairone either by telephone or  
4 in person?

5 A. No.

6 Q. Have you ever corresponded with her in any way by email or  
7 snail mail or any other kind of mail?

8 A. No.

9 Q. As far as you know, Ms. Mairone was never at any  
10 presentation that you attended between Countrywide and Fannie  
11 Mae, correct?

12 A. That is correct.

13 Q. And were you ever made aware of any statements that  
14 Ms. Mairone made at any presentation involving Countrywide and  
15 Fannie Mae?

16 A. I was never made aware of any statements.

17 Q. You testified this morning about operational reviews,  
18 right?

19 A. Yes.

20 Q. Have you ever had occasion to interact with Ms. Mairone in  
21 connection with any operational review?

22 A. No, I hadn't.

23 Q. And finally, I think just this afternoon you talked about  
24 post-purchase reviews, right?

25 A. Yes.

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1 Q. You never met with Rebecca Mairone in connection with any  
2 post-purchase review, right?

3 A. That is correct.

4 Q. So she never made any representation to you at all, is that  
5 right?

6 A. Correct.

7 MR. MUKASEY: Thank you.

8 THE COURT: All right. Redirect.

9 REDIRECT EXAMINATION

10 BY MR. CORDARO:

11 Q. Good morning, Mr. Sobczak.

12 A. Good afternoon.

13 Q. You were asked questions on cross-examination about whether  
14 the contract document governed qualifications of certain people  
15 at Countrywide, do you recall that?

16 A. Yes, I do.

17 Q. Could you take a look at Plaintiff's Exhibit 1, please.

18 MR. CORDARO: May I approach the witness, your Honor?

19 THE COURT: Yes.

20 Q. Do you recognize Plaintiff's Exhibit 1, Mr. Sobczak?

21 A. Yes, I do.

22 Q. What do you recognize it as?

23 A. I recognize it as the mortgage selling and servicing  
24 contract abbreviated MSSC.

25 Q. And who are the signatories?

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1 A. Signatures from the last page, page 23 of page 23, is Lee  
2 Bartlett and Norm Peterson.

3 Q. Is this a mortgage selling and servicing contract involving  
4 Countrywide?

5 A. Without going through the document, it appears so, yes.

6 Q. Does it say Countrywide Funding Corporation on the last  
7 page above Ms. Bartlett's signature?

8 A. Yes.

9 Q. Would you take a look at page 3 of 23. Is there any  
10 provision on that page that addresses qualified staff?

11 A. Yes.

12 Q. Could you read that provision, please, into the record.

13 A. It's provision A2. Have qualified staff and adequate  
14 facilities. Lender must at all times have employees who are  
15 well trained and qualified to perform the functions required of  
16 the lender under this contract.

17 In addition, the lender must maintain facilities that  
18 are adequate to perform its functions under this contract.

19 Q. You were asked other questions about contractual  
20 requirements. Do you recall those questions?

21 A. Yes.

22 Q. Does the contract have a provision providing that the  
23 mortgage must be an acceptable investment?

24 A. There should be language using the word "investment" in  
25 this MSSC, and I can't find it quickly offhand.

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Sobczak - redirect

1 Q. Could you turn to page 8 of 23, please.

2 A. I have it.

3 Q. Do you see any such language on this page?

4 A. It's point 17, mortgage is acceptable investment.

5 Q. Could you read that, please?

6 A. The lender knows of nothing involving the mortgage, the  
7 property, the mortgager or the mortgager's credit standing that  
8 can reasonably be expected to: Cause private institutional  
9 investors to regard the mortgage as an unacceptable investment;  
10 cause the mortgage to become delinquent; or adversely affect  
11 the mortgage's value or marketability.

12 Q. Mr. Sobczak, is this a representation or warranty by  
13 Countrywide?

14 A. Yes.

15 Q. And based on your understanding, even if the contract does  
16 not address certain other issues of the lender, must the lender  
17 comply with this representation and warranty?

18 MS. MAINIGI: Objection.

19 MR. MUKASEY: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Mr. Sobczak, based on your understanding, what is a  
22 representation and warranty?

23 A. A representation and warranty is provided by the lender to  
24 Fannie Mae that whatever is not specifically or explicitly  
25 spelled out in the guide or in other contracts, they're

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Sobczak - redirect

1 representing the mortgage to be an acceptable investment and  
2 eligible for Fannie Mae purchase.

3 Q. Mr. Sobczak, you were asked several questions about the  
4 operations of something called CMD. Do you recall those  
5 questions?

6 A. Yes.

7 Q. And you weren't told about the High-Speed Swim Lane during  
8 the time you worked for Fannie Mae, were you?

9 MS. MAINIGI: Objection.

10 MR. MUKASEY: Objection, asked and answered three  
11 times.

12 THE COURT: Overruled.

13 A. I was not told about the High-Speed Swim Lane in connection  
14 with your condition of CMD.

15 Q. You didn't know how the High-Speed Swim Lane operated, did  
16 you, at the time you worked at Fannie Mae?

17 A. No, because I didn't know about it.

18 Q. You didn't have any information while you worked at Fannie  
19 Mae about how loan specialists involved in the High-Speed Swim  
20 Lane were compensated, did you?

21 A. Correct.

22 Q. You didn't have any information while you worked at Fannie  
23 Mae about how loan specialists involved with the High-Speed  
24 Swim Lane were trained, did you?

25 A. Correct.

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Sobczak - redirect

1 Q. You didn't have any information while you were working at  
2 Fannie Mae about how loan specialists involved in the  
3 High-Speed Swim Lane were reporting to their higher chain of  
4 command, did you?

5 A. That's correct.

6 Q. You didn't have any information about how loan specialists  
7 involved in the High-Speed Swim Lane were being compensated,  
8 did you?

9 MS. MAINIGI: Objection, asked and answered.

10 THE COURT: Sustained.

11 Q. You didn't have any information about how quality control  
12 personnel involved with the High-Speed Swim Lane were being  
13 compensated, did you?

14 MR. MUKASEY: Objection, leading.

15 THE COURT: Overruled.

16 A. That's correct.

17 Q. And you didn't have any information concerning any quality  
18 reports relating specifically to Hustle loans while you were  
19 employed at Fannie Mae, did you?

20 A. That's a true statement.

21 Q. Mr. Sobczak, you were asked certain questions about prime  
22 CLUES accept, do you recall those questions?

23 A. Yes.

24 Q. And you were asked whether -- well, withdrawn.

25 Even in a prime CLUES accept situation, could there be

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Sobczak - redirect

1 conditions that CLUES imposes with respect to the closing of  
2 the loan, based on your understanding?

3 MR. MUKASEY: Objection.

4 THE COURT: Ground?

5 MR. MUKASEY: Foundation, calls for speculation.

6 THE COURT: Sustained.

7 (Continued on next page)

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DA43BAN4

Sobczak - redirect

1 Q. Mr. Sobczak, based on your understanding, does prime CLUES  
2 accept mean the loan is closed and ready for funding?

3 A. No, it does not.

4 Q. Are there other steps that must be completed before the  
5 loan goes to funding, even in a prime CLUES accept situation?

6 MR. MUKASEY: I'm going to make another leading  
7 objection. This is getting to be a little bit of testimony by  
8 counsel.

9 THE COURT: The vice of leading is directed towards  
10 suggesting the answer to a witness. And it presupposes,  
11 therefore, a witness who can be led. It is self-evident this  
12 is a witness who can't be led, so the objection is overruled.  
13 You may answer.

14 A. Could you ask the question again?

15 Q. Are there other steps after a prime CLUES accept before the  
16 loan can close?

17 A. Yes, there are.

18 Q. Can CLUES clear conditions?

19 A. No.

20 Q. Can CLUES close a loan?

21 A. No.

22 Q. Does a human being have to do those two steps?

23 A. Yes.

24 Q. Based on your understanding of the contract, would that  
25 human being have to be qualified to perform those two steps?

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Sobczak - redirect

1 A. Yes.

2 Q. With respect to refinancings. Even if a refinancing goes  
3 through a prime CLUES accept, can CLUES clear the conditions if  
4 any?

5 A. No, it can't.

6 Q. Can CLUES clear the loan to close?

7 A. No.

8 Q. Does a human being have to take those two steps?

9 A. Yes.

10 Q. Based on your understanding of the contract, does this  
11 human being have to be qualified to perform those tasks?

12 A. Yes, they do.

13 Q. I'd like you to look if it's still up there at Defendant's  
14 Exhibit 59. Does this exhibit mention the Hustle, the  
15 High-Speed Swim Lane, or HSSL?

16 A. I'll need to take a moment to look through the document.

17 MS. MAINIGI: Objection, your Honor.

18 MR. MUKASEY: We object as well. This speaks for  
19 itself and it's argumentative.

20 THE COURT: No, I think under these circumstances,  
21 I'll allow it. You may take a quick look.

22 A. I've scanned the document and I see no reference to  
23 High-Speed Swim Lane, or HSSL.

24 Q. Does this document make any references to the role of loan  
25 specialists with respect to underwriting decisions?

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Sobczak - redirect

1 A. Yes, it does.

2 Q. Where does it say that?

3 A. I find it on page seven, or at least one reference to it on  
4 page seven. I see other references. Page five, there may be  
5 others.

6 Q. Where does it say the word "loan specialist"?

7 A. It doesn't say the word "loan specialist."

8 Q. Does this document say anything about compensation of loan  
9 specialists?

10 A. I don't see the words "compensation" mentioned.

11 Q. Do you see anything about training?

12 THE COURT: So I think defense counsel may have  
13 misunderstood when I overruled their objection about whether it  
14 said anything about Hustle. They may have inferred that that  
15 meant that they couldn't object to these other questions as  
16 argumentative, disguised jury argument.

17 But, if upon clarification, they would like to raise  
18 those objections on a going forward basis, including to the  
19 pending question, the Court will consider those objections.

20 MS. MAINIGI: We object, your Honor.

21 MR. MUKASEY: As do we.

22 THE COURT: What a surprise. Well then, I have no  
23 choice but to sustain the objection.

24 MR. CORDARO: I will move on, your Honor.

25 THE COURT: Thank you. Although I will say this whole

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Sobczak - redirect

1 process demonstrated beyond peradventure the Court's

2 observation that this witness could not be led.

3 Q. Mr. Sobczak, could you look at page DX 396, please.

4 A. I'm sorry, which -- oh. I have it.

5 Q. Mr. Sobczak, do you see that the letters HSSL?

6 A. Yes, I do.

7 Q. Is there anything on this page that defines what HSSL  
8 means?

9 A. No.

10 MR. CORDARO: May I consult one second, your Honor.

11 Q. Mr. Sobczak, are you aware of where this document would  
12 ordinarily come from?

13 THE COURT: Referring to?

14 Q. DX 396.

15 A. This appears to be a Countrywide generated note associated  
16 with that loan.

17 Q. Would it be associated with a loan file?

18 A. With that -- with that loan file, loan number, borrower  
19 name. It is specific to a loan or a loan file.

20 Q. Are you familiar with loan files?

21 A. Yes.

22 Q. Are you familiar with the number of pages in a typical loan  
23 file?

24 A. I've seen a lot of files, so, yes.

25 Q. How many pages are typical in a loan file? Withdrawn.

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Sobczak - redirect

1 Is there typically only one page in a loan file?

2 MS. MAINIGI: Objection, your Honor. Argumentative.

3 THE COURT: No, I think I'll allow that. You may

4 answer that.

5 A. No loan file has one page.

6 MR. CORDARO: Nothing further, your Honor.

7 THE COURT: All right.

8 MS. MAINIGI: Your Honor, I have no questions at this  
9 time, but I would like to request a quick side bar before the  
10 witness leaves.

11 THE COURT: Sure.

12 (Continued on next page)

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DA43BAN4

Sobczak - redirect

1 (At the side bar)

2 MS. MAINIGI: Your Honor, on this self-reporting  
3 question, your Honor ruled that out as irrelevant, and I'd like  
4 to ask for reconsideration on that.

5 The fact that that is a provision in the contract that  
6 the government is relying on as part of their claims and it is  
7 a provision that was honored only in the breach, is essentially  
8 a modification of the contract by the course of conduct of the  
9 parties. And we ought to be able to bring in evidence of that.  
10 This witness is able to speak to that issue and we ought to be  
11 able to preserve that evidence.

12 MR. MUKASEY: Moreover, the government read portions  
13 of that into the record with this witness and I believe the  
14 Freddie Mac witness.

15 THE COURT: I don't understand that latter point.  
16 What other evidence, if any, other than the question you  
17 proposed to put to him, which also sounds to me like disguised  
18 hearsay, would you have that the course of conduct modified  
19 this contract? Besides your question was originally directed  
20 to lenders as a whole, not just Countrywide, so that cannot be  
21 a basis for modifying the contract.

22 MS. MAINIGI: Well, the course of conduct between  
23 Fannie Mae and all lenders during that time period.

24 THE COURT: No, no, I'm sorry. If the claim is that  
25 the course of conduct between Countrywide and Fannie Mae

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Sobczak - redirect

1 amended the contract between them, that might arguably be  
2 relevant.

3 MS. MAINIGI: Okay.

4 THE COURT: That wasn't the question put.

5 MS. MAINIGI: That's correct, your Honor.

6 THE COURT: Moreover, how would he know this? He  
7 might know an example here or there from personal knowledge,  
8 but to know it more generally, he would have to know it, since  
9 it is not a matter of a writing, from having either been told  
10 it secondhand, thirdhand, fourth-hand, so, it would be  
11 disguised hearsay of a fairly extreme sort.

12 MS. MAINIGI: May I ask the question as it relates  
13 just to Countrywide then?

14 THE COURT: Well, how even as to Countrywide? You'll  
15 have to establish a foundation that he knows it from personal  
16 knowledge.

17 MS. MAINIGI: Can I use -- well.

18 THE COURT: I'll allow you to try that. I'm skeptical  
19 that you are going to be able to do it, but I don't know. You  
20 are a very skillful counsel, maybe you'll pull it off.

21 Although I thought the high point of this entire  
22 trial, in my view, was when government counsel asked him  
23 whether it was a loan specialist or somebody and he said, oh,  
24 well, it's on pages X, Y, Z, Q, and R. All right.

25 MS. MAINIGI: Just to be clear, are you going to

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Sobczak - redirect

1 sustain an objection if I use the phrase "course of conduct"?

2 THE COURT: I won't object to you using it ultimately  
3 if you lay a foundation. But if you use it initially, I will.

4 What is your basis for saying that this was the course  
5 of conduct with Countrywide?

6 MS. MAINIGI: It was understood, your Honor, that the  
7 self-reporting requirement was really for some sort of  
8 systemic -- at the time was really for some sort of systemic  
9 issue, not a loan-by-loan issue.

10 THE COURT: You can ask him.

11 MS. MAINIGI: Can I ask him to explain his  
12 understanding of --

13 THE COURT: If he has one, and if he was in a position  
14 to have such an opinion based on his personal knowledge or  
15 experience, then you can put that question, I would start with  
16 that.

17 (Continued on next page)

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DA43BAN4

Sobczak - redirect

1 (In open court)

2 MS. MAINIGI: May I proceed, your Honor?

3 RECROSS EXAMINATION

4 BY MS. MAINIGI:

5 Q. Just a couple of questions, Mr. Sobczak, relating to  
6 self-reporting. We talked earlier about the self-reporting  
7 provision, do you recall that?

8 A. Yes.

9 Q. Do you have personal knowledge of Countrywide's reporting  
10 related to self-reporting, Mr. Sobczak?

11 A. I have some knowledge, yes.

12 Q. What is your understanding of the manner in which  
13 Countrywide self-reported in the 2007, 2008 time period?

14 MR. CORDARO: Objection.

15 THE COURT: Let's turn, counsel, remind me where the  
16 self-reporting provision is.

17 MS. MAINIGI: Your Honor, I did not actually put a  
18 provision in front of him.

19 THE COURT: Okay. Let's do that.

20 MS. MAINIGI: We can do that, your Honor. Apologies,  
21 your Honor.

22 THE COURT: That's all right.

23 MS. MAINIGI: I believe it is an admitted document,  
24 your Honor, PX 2.

25 THE COURT: Yes. So can someone, if we can put it on

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Sobczak - recross

1 the screen, perhaps. Let's get to the relevant provision. I  
2 think it is Plaintiff's 1. But go ahead. We'll see. Maybe it  
3 is 2. All right.

4 Where is the relevant provision?

5 MS. MAINIGI: Can we go to the next page, Alex. Would  
6 you blow that up so we can find it.

7 MR. CORDARO: Your Honor, excuse me. I think this is  
8 in the selling guide, not the contract. Exhibits 1 --

9 THE COURT: Wherever it is, can someone -- you folks  
10 have been referring to it all day.

11 MR. CORDARO: I don't know if this was admitted. I  
12 think it might be.

13 MS. MAINIGI: DX 1223, Alex.

14 Counsel, do you know what provision you used with, was  
15 it Ms. Brewster?

16 MR. CORDARO: I'm trying to chase that down as we  
17 speak. I believe there are two provisions, one of them is in  
18 301.01 toward the end of that section.

19 THE COURT: Let's look at that first. In a size that  
20 can be read.

21 MS. MAINIGI: I think it is the "we require"  
22 paragraph, Alex. If we can blow that up, please.

23 Q. Mr. Sobczak, do you know that as one of the self-reporting  
24 provisions?

25 A. From the guide at that time, yes.

DA43BAN4

Sobczak - recross

1 MS. MAINIGI: I believe there is another provision on  
2 page 23. It begins with "we expect" in the middle of the first  
3 full paragraph. Two-thirds of the way down. "We expect the  
4 lender."

5 THE COURT: Hold on. All right. We'll take that one  
6 first.

7 "We expect the lender to advise its lead Fannie Mae  
8 regional office immediately if it learns of any  
9 misrepresentation or breach of a selling warranty. This  
10 notification is required for all breaches or  
11 misrepresentations, including fraud in the origination and  
12 underwriting processes, regardless of whether the act is  
13 committed by the lender, the lender's agent, the borrowers, or  
14 any other third party, or whether or not the lender believes  
15 that the fraud or misrepresentation constitutes a breach of its  
16 representations and warranties."

17 So, you see that language, Mr. Sobczak?

18 THE WITNESS: Yes.

19 THE COURT: Were you familiar, if not necessarily that  
20 exact language, with that general requirement?

21 THE WITNESS: Yes.

22 THE COURT: In your experience with Countrywide, did  
23 Fannie Mae convey any exception to that requirement?

24 THE WITNESS: No.

25 THE COURT: Okay. Let's look at the other one.

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Sobczak - recross

1            "We require that the results of quality assurance  
2 reviews be reported to the lender's management on a regular  
3 basis, preferably within 30 days after a review is completed.  
4 The lender should have in place procedures to ensure that all  
5 significant issues identified through the quality assurance  
6 review process are satisfactorily resolved. If the lender  
7 identifies an issue that significantly affects our risk for a  
8 mortgage the lender sold to us, the lender must notify us  
9 immediately, and then provide a written report of the findings  
10 and corrective actions being taken to its lead Fannie Mae  
11 regional office within 30 days. We will work closely with the  
12 lender to evaluate the facts of the case and come up with an  
13 appropriate solution."

14            You see that language, Mr. Sobczak?

15            THE WITNESS: Yes, I do.

16            THE COURT: If not necessarily familiar with those  
17 exact words, were you familiar with that general requirement?

18            THE WITNESS: Yes.

19            THE COURT: To your knowledge, did Fannie Mae convey  
20 to Countrywide any exception to that requirement?

21            THE WITNESS: Not to my knowledge.

22            THE COURT: All right. Do you want to put some  
23 further questions?

24            MS. MAINIGI: I do, your Honor.

25            BY MS. MAINIGI:

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Sobczak - recross

1 Q. What type of reporting did Countrywide provide under those  
2 provisions to your knowledge, Mr. Sobczak?

3 MR. CORDARO: Objection.

4 THE COURT: It is a little vague, but if the witness  
5 can answer it I will allow it.

6 A. From -- from time to time, and my answer is not just  
7 related to the 2007, 2008 time period, I do remember receiving  
8 self-reports on individual loan findings from Countrywide.

9 Q. Do you recall receiving reports of -- withdrawn.

10 No further questions, your Honor. Thank you.

11 THE COURT: All right. Anything else?

12 MR. MUKASEY: May we have one moment, your Honor.

13 THE COURT: Yes.

14 (Pause)

15 MR. MUKASEY: No, thank you, your Honor.

16 THE COURT: You may step down. Thank you very much.

17 (Witness excused)

18 THE COURT: Please call your next witness.

19 MS. SCHOENBERGER: The United States calls Joan Boland  
20 by deposition testimony.

21 THE COURT: So, ladies and gentlemen, I mentioned to  
22 you before about depositions. This is statements under oath  
23 that a witness gives in a lawyer's office before trial. And  
24 both sides can take the depositions of anyone.

25 We had some deposition testimony come into evidence

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1 previously for what's called possible impeachment. Whether it  
2 was a question of whether a witness who was on the stand had  
3 given inconsistent testimony previously or not.

4 But there is another reason deposition testimony may  
5 come into evidence, and that's because the witness is  
6 unavailable to testify for a variety of legal reasons, such as  
7 they're not geographically within the jurisdiction of the  
8 court, for example. So, in those cases, portions of the  
9 deposition can be played, and they can be considered for you  
10 for all purposes.

11 So this will be a videotape of portions of the  
12 testimony given at Mr. Boland's deposition, and you can treat  
13 it the same way as if he was sitting right here. All the  
14 objections have already been dealt with. So, you can consider  
15 this the same as you would a live witness.

16 MR. HEFTER: May we just approach briefly before the  
17 video is played?

18 THE COURT: About your limiting instruction?

19 MR. HEFTER: Yes.

20 THE COURT: How were you going to do that?

21 MR. HEFTER: I was going to ask your Honor that  
22 question as well. I have a list of the lines that you've  
23 already ruled where a limiting instruction is appropriate. I  
24 don't know the best way of doing it.

25 THE COURT: I think here is the way to do it. So,

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1 because there is no judicial officer present when a deposition  
2 is taken, there is no one to say on the videotape that this  
3 answer can only be received against the banks and not against  
4 Ms. Mairone.

5 So, why don't we do this. When we get to each point  
6 where such an instruction is appropriate, just raise your hand  
7 and I will say the word "limitation," and you will understand  
8 that the answer that follows at that point is receivable only  
9 against the banks, not Ms. Mairone.

10 MR. HEFTER: That sounds acceptable to us, your Honor.

11 THE COURT: But is it acceptable to your advisor?

12 MR. ARMAND: Is there a way to know when the limiting  
13 instruction stops?

14 THE COURT: When given, it will be only as to the  
15 answer that's been given to that particular question.

16 MR. ARMAND: Understood. Thank you, your Honor.

17 MR. HEFTER: Your Honor, I think I understand the  
18 issue. And that is, when the deposition transcript, if you  
19 will recall, was submitted to your Honor, we had not made those  
20 objections separately.

21 THE COURT: That's right.

22 MR. HEFTER: But you permitted us to proceed in this  
23 fashion. So, we have the portions of the transcript that  
24 you've permitted to be shown to the jury, but you haven't  
25 considered whether it is appropriate to have a limiting

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1 instruction. Based on your practice, we would expect that will  
2 be -- and your rulings throughout the trial, we would expect  
3 that would be the ultimate result. But we don't know that. So  
4 I don't want to raise my hand in error, that's what I am  
5 saying. In the event that --

6 THE COURT: Raise your hand. And if I disagree with  
7 you, I won't say to the jury the magic word "limiting." Which  
8 they will understand that instruction applies.

9 MR. HEFTER: That's fair. One thing. My colleague,  
10 who is the expert on Mr. Boland, I am going to have him sit  
11 here and raise his hand.

12 MS. SCHOENBERGER: We do have a copy from the video  
13 vendor of the portions of the transcript that will be played.  
14 And we can distribute that to the Court and also to opposing  
15 counsel.

16 THE COURT: All right.

17 MS. SCHOENBERGER: May I approach?

18 THE COURT: I'm told that this is about an hour, so  
19 we'll hear half of it today.

20 (Video playing)

21 Q. Good morning. Can you please state your full name for the  
22 record.

23 A. John Boland.

24 Q. My name is Carina Schoenberger. I am an assistant United  
25 States attorney and I represent the plaintiff in this matter



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Boland

1 the United States.

2 THE COURT: Can everyone hear?

3 Q. Where are you currently employed?

4 A. Fannie Mae.

5 Q. How long have you been at Fannie Mae?

6 A. Since November 19, 2012.

7 Q. What is your title there?

8 A. Manager.

9 Q. What do your responsibilities entail?

10 A. I manage a team of underwriters who answer questions from  
11 lenders.

12 Q. Prior to Fannie Mae, where did you work?

13 A. Bank of America.

14 Q. How long had you been at Bank of America?

15 A. 14 years.

16 Q. Was it ever known or was it always Bank of America during  
17 those 14 years?

18 A. No, it wasn't.

19 Q. What was it previously?

20 A. Countrywide Home Loans.

21 Q. When did you leave Bank of America?

22 A. October 1st.

23 Q. Of what year?

24 A. Of 2012.

25 Q. Why did you leave?

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Boland

1 A. Bank of America had chosen to separate my employment.

2 Q. What was your understanding of why that was?

3 A. I managed a team of 400 associates, and somebody on the  
4 front line shared a password with another associate. And so  
5 several in the management chain were deemed to -- responsible  
6 for that being done while on their watch.

7 Q. Was Fannie Mae aware of this when you took your job there?

8 A. I assume so.

9 Q. In the summer of 2007, were you employed at Countrywide?

10 A. Yes.

11 Q. What was your title at that time?

12 A. First vice president.

13 Q. What were your responsibilities as first vice president?

14 A. I managed a team of 140 underwriters who were underwriting  
15 mortgage loans.

16 Q. Where were you located?

17 A. Richardson, Texas.

18 Q. Who did you report to as first vice president?

19 A. Robert Price.

20 Q. Again, this is for the summer of 2007 period?

21 A. Correct.

22 Q. Who did Mr. Price report to?

23 A. Ed O'Donnell.

24 Q. What was the Full Spectrum Lending Division responsible  
25 for?

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Boland

1 A. Initially, it was responsible for subprime loans. And then  
2 that changed over time.

3 Q. Okay. Can you tell me a little bit more about how that  
4 changed over time?

5 A. Yes. So, Full Spectrum was designed originally, as the  
6 name applies, to offer the full spectrum of products. Whereas  
7 Countrywide offer a limited, you know, section of just prime  
8 loans. Over time, that changed to offer no subprime loans and  
9 only prime loans.

10 Q. About what time period did that change occur?

11 A. Between 2007 and 2008, roughly.

12 Q. Are you familiar with the term High-Speed Swim Lane?

13 A. I am.

14 Q. What is the High-Speed Swim Lane?

15 A. High-Speed Swim Lane was the Hustle. It was kicked off in  
16 roughly the summer of 2007, and with a lot of fanfare and it  
17 was a campaign designed to speed up the loan process.

18 Q. You referred to it as the Hustle. Was it known as the  
19 Hustle at Countrywide?

20 A. It was. The name Hustle. So I recall a kickoff meeting in  
21 the cafeteria at Countrywide with Rebecca Mairone and other  
22 senior leaders from the NCA, and we played the Hustle music.  
23 There were printed materials passed out. There was a lot of  
24 excitement. There was a lot of fanfare. It was fun. And  
25 management team did the best job they could to really get

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Boland

1 associates to buy into what was coming.

2 Q. Who was a part of the management team you referred to?

3 A. I recall Cheri Shine being there, and Rebecca Mairone, and  
4 the -- from NCA at that time was probably at least 200 people.  
5 So, forgive me if I can't recall specific names, but the  
6 entire -- the entire 200 team was there in attendance, if not  
7 absent or somewhere else. But the expectation was that  
8 everyone in the site would attend this meeting.

9 Q. Who from NCA management designed the Hustle process?

10 A. I can see his face in my head. And his name escapes me.  
11 But I was -- I was aware of a gentleman who was the main actor  
12 in developing the flow, he created the Vizio work flow, held  
13 and hosted the meetings associated in the development of the  
14 Hustle work flow.

15 It was a different work flow than what we had ever had  
16 before. So it was a bifurcated flow that would have normal  
17 loans going down one path, and these designated Hustle loans  
18 going down another path.

19 The gentleman's name, I was hoping it would come back  
20 to me and it's just been so long I don't remember his name.  
21 But he wasn't a lone actor. There were multiple people  
22 involved with it. It was a collaboration. It was a lot of  
23 input gathered and feedback sought to develop the best process  
24 possible.

25 Q. What was your understanding in the summer of 2007 of how

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Boland

1 the Hustle would work?

2 A. So the Hustle was a great -- it was a great design. The  
3 idea was well, was well thought out, and our opinion was this,  
4 this could work. This should, you know, lead to some  
5 efficiencies. And there was a lot of, you know, optimism that  
6 it would actually produce what it was built to do.

7 The way I understood the Hustle's intent was to have a  
8 separate swim lane for loans with reduced documentation, and  
9 therefore those loans would not be hung up behind other loans  
10 that required heavier documentation.

11 An example of that would be a typical loan processor  
12 would carry a pipeline of 30 loans. They can only get through  
13 so much of their pipeline in any given day. The idea of a  
14 High-Speed Swim Lane is, that if I've got a very difficult loan  
15 with a lot of documentation, I might take a majority of my day  
16 of working on that one, while a loan with less requirements  
17 sits still and doesn't get a chance to move ahead.

18 The theory would be if we put all of the easy loans  
19 into one lane -- or not easy, but all of the less complicated  
20 loans in one lane, they would then flow, and the others would,  
21 you know, be in the normal process. So, in theory, that flow  
22 had merit.

23 Q. How did it work in practice?

24 A. In practice, there were breakdowns in the way it was  
25 executed.

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1 Q. What types of breakdowns?

2 A. Loans stopped -- stopped coming into -- into underwriting  
3 for review of the documentation. So an example of that would  
4 be -- the reduced documentation suggests that Countrywide was  
5 not going to validate the income using traditional means of  
6 paystubs, W-2s, tax returns, and they were going to rely on a  
7 stated amount supposedly derived from the borrower.

8 When underwriters perform that analysis, it was a very  
9 skillful decision process. And there were oftentimes layers of  
10 management that would be involved to second sign stated doc  
11 income.

12 I can recall specifically appointing Derek Treadwell  
13 and Chuck Caprio to review stated doc loans at one point.  
14 Those were people who worked for me. Because even in  
15 underwriting, reviewing stated reasonability was a complex task  
16 that even underwriters needed considerable training and  
17 understanding to jump.

18 For example, a fireman might assume a salary of  
19 \$4,000. If it came in stated at \$20,000 a month, that would  
20 appear to not meet a reasonability test. Then the underwriter  
21 would then go through some analysis to evaluate whether or not  
22 that 20,000 was reasonable, based on tenure, based on scope of  
23 responsibility, based on complexity, a number of variety of  
24 factors that were difficult to train, and required years of  
25 experience to evaluate.

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Boland

1 Q. How would that be trained?

2 A. It would require a broad perspective after seeing many,  
3 many examples. And using how exactly it would be trained, it  
4 would be trained over time in classroom, and through experience  
5 and getting feedback from QC and from myself and other  
6 management on what was deemed reasonable.

7 There were also post-closing reviews where actual  
8 documentation was obtained after the fact, and that feedback  
9 would be given to the underwriters to validate or unvalidate  
10 the documentation that they had deemed acceptable. So the  
11 underwriters had considerable background in evaluating that  
12 stated doc income, and whether or not it was reasonable.

13 This was a pretty major topic at the company, because  
14 Countrywide was very concerned about not making loans that were  
15 unreasonable. And there was a reasonability test that was  
16 required in order to proceed on a stated doc income loan.

17 So your initial question was, how did the process go  
18 wrong in the beginning. And before I started talking just now,  
19 I talked about stated doc income, and that was one of the  
20 things that would have been signed off by an underwriter who  
21 had this skill and experience and background and expertise.  
22 And it was transitioned to somebody without that skill set, and  
23 therefore, that was an unanticipated breakdown.

24 Q. Who was it transitioned to?

25 A. Processors.

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Boland

1 Q. Who are processors?

2 A. Processors go by many names. It could be a loan  
3 specialist, it could be a home service specialist. It --  
4 general industry term is a loan processor.

5 So that variety of -- there are several job titles. I  
6 don't want to box it in on one. I'm trying to use a generic  
7 term loan processor.

8 But there were people outside of the underwriting  
9 department, and so it is important to understand the alignment  
10 of interests.

11 So there is a sales team and there's a processors team  
12 that is collocated. And their interests were in production.  
13 That was the sole point of their employment, was to produce  
14 loans. Then there was an underwriting and a funding group  
15 outside of the NCA, and their sole function was to protect the  
16 company and the investors and safeguard the quality. And they  
17 had a different alignment of interests, and that difference is  
18 critical because when you have somebody, somebody on the  
19 underwriting side checking that stated reasonability, it seemed  
20 to produce better results than when you had somebody on the  
21 processing side.

22 Q. Did you have the ability to send loans backwards in the  
23 High-Speed Swim Lane?

24 A. No. There was -- there was considerable campaign  
25 information when the Hustle was rolled out that loans only



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Boland

1 moved forward, they never moved back. And that mantra was on  
2 posters, it was in e-mail, it was on taglines, it was coming at  
3 you in every direction. So whether it was spoken, whether it  
4 was written, whether it was painted around you, loans moved  
5 forward, they never moved back.

6 Q. During the Hustle, could a loan specialist clear conditions  
7 on a loan in the High-Speed Swim Lane?

8 A. Yes.

9 Q. What does it mean to clear conditions?

10 A. So you're taking responsibility in that you have evaluated  
11 the accuracy, the truth of whatever it is that you're clearing.  
12 So when you clear a condition, if you clear a condition for a,  
13 say, a paystub, you would be affirming -- that you would be  
14 affirming many things.

15 You would say that the income calculation that's input  
16 into CLUES at the moment is accurate. There is no paystub  
17 loans, there is no red flags on the paystub, that the paystub  
18 is from the employer, stated on the Edge system and on the  
19 TAML3. That the borrower's Social Security number is  
20 accurately reflected, their name, that there are no red flags  
21 related to federal withholding so the appropriate percentages  
22 are deducted from the amount of the income.

23 There is a considerable amount that goes into clearing  
24 each and every condition. Clearing conditions is something  
25 that Countrywide for a long time never took lightly. And it

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Boland

1 was well understood that when you cleared a condition, you are  
2 putting yourself in jeopardy and putting your reputation and  
3 quality rating at risk when you clear a condition.

4 During the Hustle, the loan specialist began to sign  
5 off on much more than they had previously signed off on.

6 Q. Much more meaning more substantial conditions?

7 A. Correct. Conditions with much more risk associated with  
8 it.

9 THE COURT: The reporter is having a little trouble  
10 hearing it, but now it's too loud. So, let's get it in  
11 between. And excuse me, would someone furnish a copy of the  
12 transcript to the reporter as well.

13 MS. SCHOENBERGER: She has one, your Honor.

14 THE COURT: Go ahead.

15 (Video playing)

16 Q. Were stated doc loans part of the High-Speed Swim Lane?

17 A. Absolutely, yeah. That was -- that was the main -- that  
18 was the main the crux of the Hustle. The Hustle was mainly  
19 stated doc loans. Then beyond stated doc, there were other  
20 things that may not be required by the CLUES report, which is  
21 our automated underwriting system such as appraisal, etc.

22 Q. Is it a complex task to make reasonability determinations  
23 for a stated doc loan?

24 A. It usually is very complex to make a stated doc  
25 reasonability decision.

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Boland

1 Q. Were there reasons not to trust CLUES?

2 A. There were very good reasons not to trust CLUES. It was  
3 widely understood that if the data input was not accurate, the  
4 results were not going to be trustworthy. That's common --  
5 that's still applicable today with any underwriting system, and  
6 I don't think anyone would argue that if you put poor data into  
7 the system, you will get a poor decision out of it. But the  
8 slogan was an attempt to rein in people who are concerned with  
9 quality, calling out issues, raising awareness to a potential  
10 risk, and to silence those people from slowing down loans so  
11 that they would only go forward, and would never go back.

12 Q. Mr. Boland, Exhibit 4 is Bate stamped BANA S.D.N.Y. E  
13 001450756. Is this an e-mail exchange between you and Audrey  
14 Knabe from August 9, 2007?

15 A. Yes, it is.

16 MS. SCHOENBERGER: Your Honor, can we offer into  
17 evidence Plaintiff's Exhibit 22, which is Boland Exhibit 4 from  
18 the deposition.

19 THE COURT: Yes. Received.

20 MR. HEFTER: Can I look at it first, your Honor?

21 THE COURT: Yes.

22 MS. SCHOENBERGER: Can we publish this to the jury  
23 before we proceed?

24 MR. HEFTER: No objection, your Honor.

25 THE COURT: Received.

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Boland

1 (Plaintiff's Exhibit 22 received in evidence)

2 (Video playing)

3 Q. What is being requested of you in this e-mail?

4 A. The sender is requesting that I endorse the authority for  
5 two people involved with the Hustle.

6 Q. Who is Audrey Knabe?

7 A. She was a processing leader in the NCA. She was in a  
8 leadership capacity over multiple managers.

9 Q. What is your response to her request?

10 A. She's asking me for an approval, and I said I don't know  
11 who these people are, indicating that I'm not qualified to  
12 evaluate their ability to clear conditions. And her response  
13 is, they are assigned to the Hustle thing, come on, work with  
14 me. Indicating that this is different than it used to be.  
15 Don't apply the old rules, this is the Hustle thing, I should  
16 be working with her and doing things that I would not normally  
17 have done. And she's asking me to approve things that I would  
18 not normally -- I wouldn't approve something without knowing  
19 the qualities or the qualifications of the individuals. But,  
20 this is implying that it is not a big deal. It is the Hustle  
21 thing.

22 Q. Did you recommend that these two individuals be given level  
23 two authority?

24 THE COURT: So excuse me. This answer here is within  
25 the limitation. But I think really this is probably a good

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1 place to end for today. So we'll come back to that first thing  
2 Monday.

3 So, ladies and gentlemen you'll be glad to know that  
4 we are right on schedule. Monday will be the end of our second  
5 week, and the government had predicted two weeks for its case,  
6 and my understanding is they will complete their case on  
7 Monday.

8 We will on Monday, in the greater interest of sports,  
9 sit only until 3:30. And we'll start at 9:30 promptly, so  
10 we'll see you on Monday. Have a great weekend.

11 (Jury excused)

12 (Continued on next page)

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1 THE COURT: With respect to the matters that have now  
2 been briefed, with one exception, I will hear final argument on  
3 all of them at 9 a.m. on Monday.

4 The one that I think we need to resolve now is the  
5 Simantel matter. My tentative view, but I say this just so  
6 that each side knows what it has to show, so to speak, is she  
7 is an officer within the terms of the Federal Rules of Civil  
8 Procedure, and that her testimony can therefore be compelled.

9 But, that there has not yet been a sufficient showing  
10 to warrant its admissibility on the government's case, and that  
11 therefore, we need not call her for Monday. But, that this is  
12 very much without prejudice to the possibility that it may come  
13 in as rebuttal evidence. Because, even though I don't normally  
14 allow rebuttal evidence, this is clearly an exception that I  
15 have flagged repeatedly, that the government in its own papers  
16 has argued that it's chiefly admissible as a rebuttal to a  
17 defense argument. And all of that argument may have been  
18 limbed on opening statement of the defense, that's not  
19 evidence. And so we would have to see what the defense does in  
20 its actual testimony, its actual case. So, that's my tentative  
21 view.

22 So let me hear first on the officer issue if the  
23 defense wants to be heard further. I should note for the  
24 record that I received submissions on this issue not only from  
25 counsel for the two sides here, but also from Ms. James,

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1 counsel for the witness. So I've considered all that. But if  
2 there is anything further defense counsel wants to argue on  
3 that, I'll hear now.

4 MS. MAINIGI: Your Honor, just simply a point of  
5 clarification as to the reason for your position. Is it simply  
6 because she is a senior vice president by title and the  
7 designated officer that you have that view?

8 THE COURT: No, it is not just because of that. But I  
9 think those are important circumstances to be considered. The  
10 bank itself labels her an officer. This is not exactly an  
11 unsophisticated bank. They have to know or recognize, one can  
12 infer, the legal implications, which are many, and not just  
13 under this rule, of labeling someone an officer. And she and  
14 the bank have benefits from that and they take the  
15 corresponding burdens.

16 But in addition, I am satisfied from the attachments  
17 to the government's letter that she was in fact operating at  
18 the level both in terms of responsibilities and in terms of  
19 discretion and in terms of authority that are typically the  
20 earmarks of an officer. So it is all those things.

21 MS. MAINIGI: Very well, your Honor. And with respect  
22 to the issue of just the fact that she is a designated officer  
23 and an SVP, I'm sure your Honor noted that 48 percent of the  
24 employees in fact fall into that role, including administrative  
25 assistants and paralegals as designated officers.

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1 THE COURT: And that's why it was not the only factor  
2 by any means that I took account of. But I have to say, I  
3 think the bank and banks generally can't so blithely have it  
4 both ways. If you're going to call a janitor a vice president,  
5 and I'm exaggerating perhaps only slightly, and hold one's self  
6 out as a vice president, of course here we have a senior vice  
7 president, you do so because you recognize that the public as a  
8 whole has an understanding that someone who is a vice  
9 president, let alone a senior vice president, is not a  
10 janitorial type of person. So, if it is a charade that banks  
11 engage in, they take the burdens of that charade along with the  
12 benefits.

13 MS. MAINIGI: Your Honor, I think there is a  
14 distinction between those 48 percent of the employees and for  
15 the various purposes that they are designated officers, and  
16 then the executive officers of the company, which number in the  
17 range of 10, who are the individuals, in our view, your Honor,  
18 that would be subject to Rule 45 subpoena power.

19 THE COURT: I understand that's your view. And I  
20 certainly considered it. But it is not the view of this Court.

21 MS. MAINIGI: Thank you, your Honor.

22 THE COURT: Now let me hear from the government  
23 though, if you still think her testimony should be introduced  
24 on your direct case.

25 MR. ARMAND: Well, your Honor, I believe the



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1 government's position was that with regard to self-reporting,  
2 Ms. Simantel, as in connection with her role as the head of  
3 quality control, was the one who should be self-reporting the  
4 loans that were found to be severely unsatisfactory, including  
5 those that came out of FSL and the ones that came out of the  
6 High-Speed Swim Lane.

7 And, the incident with Freddie Mac with failing to  
8 report defective loans in connection with a site review, it  
9 goes to her intent in concealing defective loans that should  
10 have been reported.

11 I realize that the self-reporting requirement does not  
12 apply to the sample of loans. But, the bank did undertake to  
13 provide to Freddie Mac in connection with this visit a sample  
14 of loans and removed the ones or certain ones that were  
15 defective, that were known to be defective, and it is the  
16 government's position that it was because the bank wanted to  
17 make the percentage of loans that were defective look more  
18 favorable than it really was.

19 In connection with the self-reporting argument that  
20 the government is making, the e-mails with Ms. Biehler which  
21 show that Ms. Simantel was not truthful with regard to those  
22 loans, it is relevant.

23 And in addition, with regard to the site visit, the  
24 defense has already introduced into evidence the PowerPoint  
25 presentation which was shown to Ms. Biehler, who is now an

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1 employee of Bank of America. And in connection with the same  
2 site visit. And the people within Freddie Mac that the bank is  
3 claiming that the High-Speed Swim Lane was disclosed to, the  
4 very same people who were being misled, in connection with the  
5 loan review, that was part of the same site visit.

6 And, so, we believe that all of this is evidence that  
7 the jury should be able to consider in connection with  
8 determining whether the bank's relationship with Freddie Mac  
9 was one that was truthful.

10 THE COURT: I flagged earlier in the case that in  
11 order for the bank to have the requisite specific intent to  
12 defraud, the jury would have to conclude that at least one  
13 relevant person in the bank had a specific intent to defraud.  
14 There is no collective intent. Obviously, you're alleging  
15 that's true of Ms. Mairone. Who else are you alleging it to?  
16 Or maybe more narrowly, you may have to answer that in a Rule  
17 50 motion.

18 But are you alleging that Ms. Simantel is such a  
19 person?

20 MR. ARMAND: In connection with -- she was not one of  
21 the people who was involved in the creation of the High-Speed  
22 Swim Lane. But, with regard to failure to self-report, it  
23 would be evidence of fraudulent intent, yes.

24 (Continued on next page)  
25

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1 THE COURT: No, maybe you misunderstood my question.  
2 There are different aspects of your fraud, but with respect to  
3 any of the fraud that you are claiming creates liability in  
4 this case, namely either misrepresentations or intentional  
5 failures to report when there was a duty to report, are you  
6 claiming, with respect to the Hustle loans, that Ms. Simantel,  
7 with intent to defraud, did one of those things that is a  
8 material part of your claim of fraud?

9 MR. ARMAND: Your Honor, we hadn't come up with a  
10 specific list of individuals other than what we presented in  
11 terms of our complaint in the case.

12 THE COURT: You need to think about that, because I  
13 think that will be a necessary part of the Rule 50 colloquy.  
14 But if Ms. Simantel is someone you're making such a claim for,  
15 then I could see the argument that this email comes in to show  
16 her intent under Section 404(b) of the Federal Rules of  
17 Evidence, because although it would not be in connection with  
18 the Hustle loans, the question would be did she fail to  
19 self-report in connection with the Hustle loans because she had  
20 an intent to defraud or did she do so for some innocent reason.  
21 By innocent, you could have -- "innocent" is probably the wrong  
22 word, did she for some other reason. For example, you could  
23 tell a lie that is not a lie intended to defraud someone of  
24 their money or property.

25 So if she were someone you were claiming had intent to

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1 defraud in connection with the Hustle loans in connection with  
2 a material part of the misrepresentations or omissions charged  
3 in connection with the Hustle loans, then even on your direct  
4 case this might be relevant evidence under 404(b) as bearing on  
5 her intent. I would have to then consider whether it was more  
6 prejudicial, if you will 403-type issues. If, on the other  
7 hand, you were not contending that as to her, then I think it  
8 only comes in if the bank, on its case, makes some of the  
9 broader claims that we heard on opening statement about honesty  
10 of people, et cetera, et cetera.

11 Now the problem is it's Friday, and your case is  
12 otherwise going to close on Monday, but if you want to to think  
13 about that over the weekend, who do we have left? We have  
14 maybe 45 minutes or so, maybe more, but any way, worst case an  
15 hour of Mr. Boland, complete with all the limiting  
16 instructions, we have what I'm guessing is no more than 45  
17 minutes of Mr. Price, from a quick look at the deposition, and  
18 then who else do we have?

19 MR. ARMAND: Lars Hansen, who is an FHA OIG agent who  
20 is going to be discussing data, and he will also be introducing  
21 certain exhibits for which the government did not have a live  
22 witness that will be published to the jury with the Court's  
23 permission.

24 THE COURT: All right. Well, I think --

25 MR. ARMAND: We could get back to you this evening,

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1 your Honor.

2 THE COURT: I think it's not fair to have Ms. Simantel  
3 to come in here this weekend until she knows if she will  
4 testify or not. Let me see if this appeals to defense counsel,  
5 that we decide this matter Monday morning after the government  
6 has had a chance to reflect on the issue I just raised.

7 MS. MAINIGI: That's fine, your Honor, decision on  
8 Monday morning is fine.

9 THE COURT: If we had to call her on the government's  
10 direct case, we would -- assuming their direct case is finished  
11 before 3:30, we would hear all Rule 50 motions except for any  
12 aspect that had to do with Ms. Simantel, call her first thing  
13 the following morning, and then the government's case would be  
14 over and we would hear any further arguments on Rule 50 that  
15 related only to her. That way we wouldn't lose time.

16 MS. MAINIGI: Your Honor, I would like to address  
17 that. As your Honor knows, we do not represent Ms. Simantel  
18 personally.

19 THE COURT: Right, but since you've had contact with  
20 her, I think you are the natural ones to be in contact. I mean  
21 I guess if you force me to, I could have the U.S. Marshals  
22 arrest her on a material witness warrant and have her brought  
23 here in handcuffs over the weekend, but I suggest you might  
24 prefer to be the good messenger and inform her of what the  
25 Court's rulings are.

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1 MS. MAINIGI: Your Honor, I would like to focus a  
2 little on the substance here. And I know your Honor is very  
3 familiar with this, so I won't delay this, but with respect to  
4 the High-Speed Swim Lane loans, there's just no dispute that  
5 Cindy Simantel got nowhere near any High-Speed Swim Lane loans.  
6 She's not in FSL. She has nothing to do with the process  
7 whatsoever. She wasn't part of the design. She testified in  
8 her deposition -- she's been deposed twice, your Honor, she  
9 testified twice.

10 THE COURT: So that's why I was thinking -- precisely  
11 why I was leaning on not permitting her to testify in the  
12 government's case unless the door was opened in the way I  
13 indicated on the defense case. What the government just said  
14 that gave me pause is they said that she was the person --  
15 maybe I misunderstood -- who would have been in charge of  
16 self-reporting on the Hustle loans. Maybe I misunderstood  
17 that.

18 MS. MAINIGI: She didn't know what the Hustle loans  
19 were, according to her deposition, your Honor, and I don't  
20 believe -- and perhaps I'm wrong, but I have not heard any  
21 evidence -- the government is nearly about to rest in their  
22 case -- about Ms. Simantel's involvement in the self-reporting  
23 process. There was an opportunity to ask a Fannie  
24 representative, the person who had day-to-day dealings. Who  
25 was the person who asked the self-reporting question? I was.

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1 I don't think that was an accident, I think that was  
2 deliberate.

3 They have come up with this -- in my view, your Honor,  
4 and others may choose to disagree, the self-reporting issue  
5 started out in the complaint, they sought nearly zero amount of  
6 discovery on the self-reporting issue, and now they want to  
7 bring it back in in an effort to drag in this email, because  
8 frankly they have no other evidence in this case that could  
9 even remotely come close to supporting anything that could be  
10 called fraud. And that email doesn't do it either, but that is  
11 why they are desperate to drag that email into this case.

12 THE COURT: I think, perhaps, that's a rather strong  
13 characterization, but let me go back to the government just for  
14 a minute in light of what you just said.

15 What evidence is there presently in the record that  
16 suggests that she would be the one, Ms. Simantel -- probably  
17 mispronouncing her name, Simantel -- Ms. Simantel, what  
18 evidence is there from which a juror could reasonably infer  
19 that she had the self-reporting responsibility on the Hustle  
20 loans?

21 MR. ARMAND: Your Honor, with regard to her role as  
22 the head of quality control, and quality control is the  
23 function that identifies the loans that need to be  
24 self-reporting. There has been testimony about discussions, I  
25 believe, with Ms. Simantel, but not specifically with regard to

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1 Hustle loans. So that --

2 THE COURT: What evidence is there that in that  
3 position she personally had knowledge of the aspects of the  
4 Hustle program that you say required self-reporting?

5 MR. ARMAND: Your Honor, I don't think -- the  
6 government isn't saying that Ms. Simantel was aware of specific  
7 Hustle loans, there are -- the quality control reports relate  
8 to FSL overall.

9 THE COURT: What's the evidence that she had knowledge  
10 of those?

11 MR. ARMAND: She was aware of the -- there is evidence  
12 that she was aware of the sprint incentive that was going on  
13 with regard to the defect rates in March of 2008. That's not  
14 something that has been elicited yet, but she certainly would  
15 know what the defect rates were if she came to testify. And  
16 there is certainly evidence in the record from discovery  
17 indicating that Ms. Simantel -- and would put this in  
18 connection with our opposition of summary judgment -- that was  
19 she was the arbiter of what would be -- what loans that were  
20 from FSL would be deemed SUS or severely unsatisfactory.

21 THE COURT: You took her deposition?

22 MR. ARMAND: Yes, we did.

23 THE COURT: And did you ask her about her knowledge of  
24 these things you have just been talking about?

25 MR. ARMAND: Your Honor, I will have to go back to



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1 check the transcript exactly. I know the depositions focused  
2 pretty much on the emails that were at issue, but I believe  
3 there were some other documents that were shown to her that  
4 dealt with quality control and quality control numbers, but  
5 we'll have to actually look at the transcript to see exactly.

6 MS. MAINIGI: Your Honor, if I might add something  
7 with respect to that particular point. She was deposed. She  
8 was deposed twice, made her available voluntarily again a  
9 second time to the government, and I think there were all of  
10 maybe five to eight minutes spent on anything --

11 THE COURT: You made her available even before she had  
12 her own independent counsel in her lowly role as a mere senior  
13 vice president? That was very, very gracious of you.

14 MR. ARMAND: The reason why we needed to depose her a  
15 second time, your Honor, is we learned about six or seven other  
16 emails that demonstrated she misrepresented what was going on  
17 with the loans. That's why we had to depose her a second time,  
18 to ask questions about those.

19 MS. MAINIGI: Your Honor, if they were really  
20 interested in anything having to do with self-reporting -- this  
21 is not a new issue, this is not an issue that they came upon in  
22 the end of discovery and didn't have a chance to depose anybody  
23 on. It was in their complaint. They chose not to pursue it.  
24 They're pursuing it now because they're trying to bootstrap  
25 that email and Cindy Simantel in particular somehow in their

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1 case. That's the bottom line. If they wanted information  
2 about this, there were plenty of people they could have  
3 solicited this information from, including the first deposition  
4 of Cindy Simantel. But they didn't solicit any of that  
5 information from her, and the realty is they presented no  
6 evidence to date in their case on that particular issue.

7 THE COURT: Well, I continue to lean in the way I  
8 indicated preliminarily, namely that she -- that there's not a  
9 sufficient showing to warrant calling her on the government's  
10 direct case, but totally without prejudice to her being called  
11 adequate showing is made or a door is opened on rebuttal.  
12 Nevertheless, if the government wants to submit something in  
13 writing over the weekend on this issue, I'll leave open the  
14 final determination until Monday morning. But in the meantime,  
15 counsel for the banks can advise her that, based on the Court's  
16 present rulings or preliminary determinations, she does not  
17 have to to come over the weekend.

18 MS. MAINIGI: Thank you, your Honor.

19 MR. MUKASEY: Judge, I wanted to review briefly what  
20 the procedure may be for the Rule 50 motions, which I keep  
21 ruling Rule 29 motions, but I'm told they're now Rule 50  
22 motions in this Court.

23 THE COURT: That's all right, at least you haven't  
24 gotten up and said the government objects.

25 MR. MUKASEY: Not yet, although I think your Honor

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1 might have confused *U.S. v. Simantel* with *United States v.*  
2 *Pimentel*.

3 THE COURT: Very good, yes.

4 MR. MUKASEY: The Pimentel letter.

5 THE COURT: Such a show off.

6 MR. MUKASEY: I can only think of this case relative  
7 to the Federal Rules of Criminal Procedure.

8 Judge, it's our plan to submit a brief I guess Monday  
9 morning. Even though the government's case will be incomplete,  
10 we certainly have fairly strong idea of the kind of proof  
11 that's going to come in. And I think we would like to get a  
12 chance, consistent with respect to the time of the jury, to  
13 make some argument on that.

14 THE COURT: I'm definitely going to give you time at  
15 the close of the government's case, and the only question is  
16 how to make sure it we minimize cutting into good jury time  
17 that we might otherwise use. So I mean the fall-back scenario  
18 will be Monday night, because I have a matter starting at 3:30.  
19 Once I learned that we had to excuse a juror, I have an  
20 important matter, cannot be postponed, probably going to go  
21 from about 3:30 to 7:00. But I would be delighted to see you  
22 back at 7:15 or so and we could go as long as you wanted.

23 MR. MUKASEY: I wonder whether perhaps -- I'm  
24 anticipating this is what you're going to say -- we wait until  
25 the close of the government's case, we brief the issue Monday

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1 night, we argue it Tuesday morning.

2 MR. SINGER: I was going to say something a little  
3 different. What I was going to suggest was we were  
4 anticipating the government's case would close sometime on  
5 Monday morning, I think we were still anticipating that,  
6 subject to --

7 THE COURT: If it closes say at one o'clock, we'll  
8 hear argument until 3:30.

9 MR. SINGER: That's what we would like to do.

10 THE COURT: You know what remains, it sounds -- I'm  
11 not sure how long this witness is going -- who is this witness  
12 again, the one remaining live witness?

13 MR. ARMAND: Lars Hansen, your Honor.

14 THE COURT: Roughly how long on direct?

15 MR. ARMAND: Most likely less than an hour, your  
16 Honor.

17 THE COURT: So sounds to me like it's largely in  
18 defense hands how much you want to do on cross.

19 MR. SINGER: Assuming -- I think this is the case,  
20 that we get done by early afternoon on -- the latest on Monday,  
21 we would be prepared to submit a letter at that point and argue  
22 at that point. My concern, though, is --

23 THE COURT: Wait a minute, I do not -- one thing is  
24 clear, I gave you permission yesterday when this first came out  
25 to put in a letter. I'm not going to receive it -- I'm not

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1 going to read a letter that I see two minutes before the oral  
2 argument. So if you want to get me a letter, you know exactly  
3 what -- there's no evidence now that you don't basically know  
4 about, so you can send me the letter and get it to me by Monday  
5 morning and I will read it.

6 MR. SINGER: Understood, your Honor.

7 THE COURT: I don't have to watch the depositions, I  
8 already read them. But I don't want to see it Monday  
9 afternoon.

10 MR. SINGER: Understood, your Honor. And the concern  
11 is that when we put in any sort of a submission, including the  
12 argument -- and this goes to the Simantel issue as well -- it's  
13 never been my practice to make an argument like that prior to  
14 the close of the government's case, because if you do, then of  
15 course the government has an opportunity, to which it's really  
16 not entitled, to try to correct and improve the case that it's  
17 presenting.

18 THE COURT: But we have already heard from them what  
19 we're going to get on Monday, we're going to complete the  
20 Boland deposition, you know exactly what is in it because you  
21 have the transcript, we're going to hear the Price deposition,  
22 you know exactly what's in there from the transcript, we're  
23 going to hear from Mr. Hansen. You must know generally what  
24 he's going to say.

25 MR. SINGER: I hope so.

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1 THE COURT: Was his deposition taken?

2 MS. MAINIGI: No, your Honor, he's not in initial  
3 disclosures.

4 THE COURT: Then you're going to have to do what every  
5 lawyer in your situation does, which is just make an oral  
6 argument and forget about a written submission. You know, it's  
7 your choice, not mine. You want to give me a written  
8 submission, fine, give it in time so I can read it. If you  
9 don't want to give a written submission because you think the  
10 government, in all its sneakiness, and will then say ah, there  
11 is something that they craftily kept back from us that they  
12 didn't think about and we're now arguing and now they know  
13 about it and they're going to work it in for Mr. Hansen, then  
14 that's OK, too. Although, of course, remember that after  
15 hearing oral argument at the close of the government's case,  
16 the Court always has, before the start of the defense case, the  
17 discretion to allow the government to reopen.

18 MR. SINGER: The other wild card, though, in the issue  
19 is Ms. Simantel, and that's another opportunity. Other than  
20 what she said in deposition, which as Ms. Mainigi pointed out,  
21 had nothing to do with the issues the government is now  
22 raising, that is another situation where we could have an oral  
23 argument and put in a brief, and then the government could try  
24 to elicit things from Ms. Simantel that we didn't anticipate.

25 THE COURT: You know, the life of a trial lawyer is

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1 awfully tough. You really should have -- you could have been  
2 an accountant. I adhere to what I said before. Now if it  
3 turns out the government's case doesn't end until 3:30, then  
4 think of all the hours you'll have to deal with all this until  
5 you come back to my courtroom at 7:15.

6 MR. SINGER: And that's how I will spend those hours.

7 Your Honor, one more point of clarification for Monday  
8 morning. Your Honor said you will hear all fully briefed  
9 matters at 9:00 a.m. I'm only aware of one.

10 THE COURT: I thought there were two, Hustle versus  
11 non-Hustle matter and then --

12 MS. NAWADAY: Your Honor, we would like to hand up a  
13 response to defendants' argument concerning the affecting  
14 element.

15 THE COURT: Yes, that's the other one.

16 MR. SINGER: I didn't have that yet.

17 THE COURT: Those are the two, yes.

18 MR. SINGER: Thank you.

19 THE COURT: All right. Anything else?

20 MS. MAINIGI: Your Honor, I suppose in the -- with  
21 respect to depending on what happens with the Rule 50, when  
22 would you expect to have the first defense witness?

23 THE COURT: Tuesday morning.

24 MS. MAINIGI: Thank you.

25 MS. NAWADAY: Your Honor, one other possible issue on

DA4TBAN5

1 letter briefing, your Honor mentioned -- made a comment the  
2 other day that the government took to be possibly suggesting  
3 that a criminal venue requirement might be applicable to this  
4 case, and if that's an issue, we would like an opportunity to  
5 put in a submission.

6 THE COURT: I was really just responding -- you're  
7 right it's not a criminal venue issue, I was responding to the  
8 point that I wasn't, in my preliminary instruction, specifying  
9 each and every thing that had to be specified, but I think on  
10 reflection that example, which I picked off the top of my head,  
11 is probably a poor one. I doubt that the criminal venue  
12 provisions come into play here.

13 MS. NAWADAY: Thank you, your Honor.

14 THE COURT: OK, anything else?

15 Very good. Thanks so much. I will see you all on  
16 Monday.

17 (Adjourned to October 7, 2013 at 9:00 a.m.)  
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